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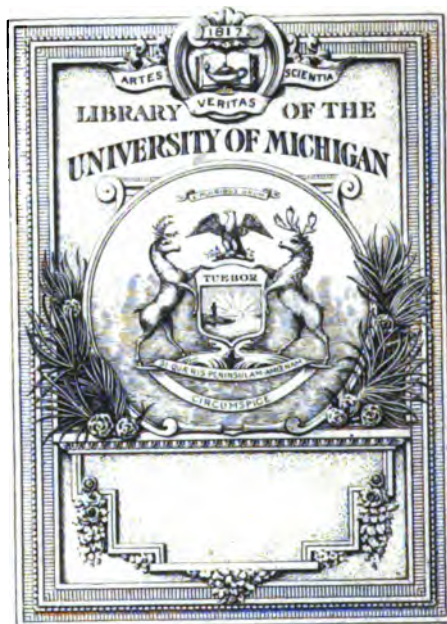
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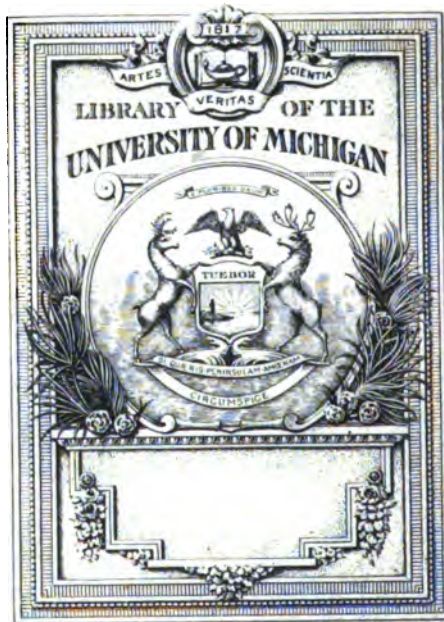
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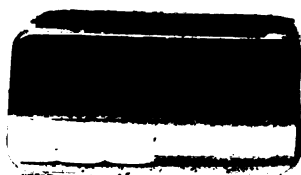














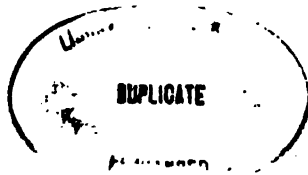
JOURNAL  
OF THE  
SENATE  
OF THE  
STATE OF NEW YORK  
FOR THE  
EXTRAORDINARY SESSION

BEGUN AND HELD AT THE CAPITOL, IN THE CITY OF ALBANY  
ON WEDNESDAY, THE 21st DAY OF JUNE, 1905.



ALBANY  
BRANDOW PRINTING COMPANY  
STATE LEGISLATIVE PRINTERS

1905



SEP 10 1907  
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# JOURNAL OF THE SENATE.

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## EXTRAORDINARY SESSION.

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### STATE OF NEW YORK:

SENATE CHAMBER, IN THE CITY OF ALBANY, WEDNESDAY, JUNE 21, 1905.

Prayer by Rev. H. O. Hiscox.

Pursuant to the following proclamation of the Governor, the Senate convened in the Senate Chamber, and was called to order by the President:

#### STATE OF NEW YORK—EXECUTIVE CHAMBER,

Pursuant to the power vested in me by section 4 of article 4 of the Constitution, I hereby convene the Legislature in extraordinary session at the Capitol in the city of Albany on Wednesday, the 21st day of June, 1905, at noon.

Given under my hand and the Privy Seal of the State at the Capitol in the city of Albany, this fifteenth day of June [L. s.] in the year of our Lord one thousand nine hundred and five.

FRANK W. HIGGINS.

By the Governor:

FRANK E. PERLEY,

*Secretary to the Governor.*

The President presented the following communication:

#### STATE OF NEW YORK—SENATE CHAMBER,

ALBANY, May 20, 1905.

Hon. M. LINN BRUCE, *President of the Senate, State of New York:*

Dear Sir.—Having been nominated and confirmed Forest, Fish and Game Commissioner, I hereby tender my resignation as Clerk of the Senate to take effect on this date.

I beg to remain,

Very sincerely yours,

JAMES S. WHIPPLE.

The President announced that pursuant to the provisions of the Legislative Law he had designated the Assistant Clerk, Lafayette B. Gleason to act as Clerk pending the election of a Clerk.

The Clerk called the roll and the following Senators answered as their names were called :

Allds	Cooper	Fitzgerald	Kehoe	Page
Armstrong	Cordts	Frawley	Lewis	Raines
Brackett	Cullen	Gates	L'Hommedieu	Riordan
Brown	Davis	Goodsell	Malby	Saxe
Burr	Dooling	Grady	Marks	Stevens
Carpenter	Drescher	Hasenflug	Martin	Tully
Cassidy	Elsberg	Hawkins	McCarren	Warnick
Cobb	Fancher	Keenan	McEwan	Wilcox
Coggeshall	Fechter			

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Mr. Gates offered the following:

Resolved, That a committee of two be appointed to wait upon the Governor and inform him in compliance with his proclamation of June 15th, 1905, the Senate is convened in extraordinary session and ready to proceed with business.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

The President appointed as such committee Messrs. Gates and Martin.

The above named committee returned and reported that they had performed that duty.

Mr. Saxe offered the following:

Resolved, That a committee of two be appointed to wait upon the Assembly, and inform that body that in compliance with the proclamation of the Governor of June 15th, 1905, the Senate is convened in extraordinary session and ready to proceed with business.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

The President appointed as such committee Messrs. Saxe and Cullen.

The above named committee returned and reported that they had performed that duty.

Messrs. Burnett and McKeown, a committee from the Assembly, appeared in the Senate chamber and announced that the Assembly is convened in extraordinary session and is ready to proceed to business.

Mr. Raines moved that leave of absence be granted to all Senators not present.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

A message from the Governor at the hand of his Secretary was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, *June 21, 1905.*

*To the Legislature:*

Warren B. Hooker, one of the justices of the Supreme Court of the State of New York, having requested a legislative inquiry as to his conduct, and the Assembly having referred the said request to its committee on the judiciary, and testimony having been taken before said committee and a report having been made by it;

And, upon the recommendation of said committee contained in its said report, the Assembly having unanimously voted that proceedings be taken for the removal of Said Warren B. Hooker from the said office of justice of the Supreme Court, and having directed its committee on the judiciary to formulate rules of practice and procedure in said matter, with a statement of the cause alleged for such removal and to report the same to the Assembly;

And the Legislature having adjourned, leaving said matter in abeyance;

And I, deeming the occasion an extraordinary one, having convened the Legislature in extraordinary session;

Now, Therefore, In accordance with the provisions of section 4 of article IV of the Constitution, I do hereby recommend for your consideration, at this extraordinary session, the conduct of said Warren B. Hooker, and the question of his removal from the office of justice of the Supreme Court.

●  
FRANK W. HIGGINS.

Mr. Allds offered the following:

Resolved, That Lafayette B. Gleason, be and hereby is elected Clerk of the Senate for the years of 1905 and 1906 to fill the vacancy caused by the resignation of Hon. James S. Whipple.

●



The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative, as follows:

Allds	Cooper	Fitzgerald	Kehoe	Page
Armstrong	Cordts	Frawley	Lewis	Raines
Brackett	Cullen	Gates	L'Hommedieu	Riordan
Brown	Davis	Goodsell	Malby	Saxe
Burr	Dooling	Grady	Marks	Stevens
Carpenter	Drescher	Hasenflug	Martin	Tully
Cassidy	Elsberg	Hawkins	McCarren	Warnick
Cobb	Fancher	Keenan	McEwan	Wilcox
Coggeshall	Fechter			

42

The President thereupon administered the oath of office to the Clerk.

A message from the Governor at the hands of his Secretary was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, June 21, 1905.

*To the Senate:*

I hereby nominate as a Railroad Commissioner, George W. Aldridge, of the city of Rochester, for a term ending June 5, 1910, who was appointed as such commissioner during the recess of the Senate.

FRANK W. HIGGINS.

Ordered, That said message be referred to the committee on railroads.

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, June 21, 1905.

*To the Senate:*

I hereby nominate as Agent of the Onondaga Indians residing on the Onondaga Reservation, Oliver Nichols, of South Onondaga, who was appointed as said agent, during the recess of the Senate to fill the vacancy caused by the death of Daniel Pinckney.

FRANK W. HIGGINS.

Ordered, That said message be referred to the committee on finance.

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, June 21, 1905.

*To the Senate:*

I hereby nominate as State Water Supply Commissioners:

Henry H. Persons, of East Aurora, Erie county, for a term ending June 5, 1910;

Milo M. Acker, of the city of Hornellsville, for a term ending June 5, 1907;

John A. Sleicher, of the city of New York, for a term ending June 5, 1908;

Charles Davis, of the city of Kingston, for a term ending June 5, 1906; and

Ernst J. Lederle, M. D., of the city of New York, for a term ending June 5, 1909, who were appointed as such commissioners during the recess of the Senate.

I also hereby designate Henry H. Persons, of East Aurora, Erie county, as President of said State Water Supply Commission.

FRANK W. HIGGINS.

Ordered, That said message be referred to the committee on finance.

Mr. Raines moved that the Senate stand in recess until three o'clock to-day, p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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### THREE O'CLOCK P. M.

The Senate again met.

A message from the Assembly was received and read in the words following:

Resolved, That the report of the committee on the Judiciary be and the same is hereby adopted as presented and that a copy of the same and the schedules thereto annexed be transmitted to the Senate, as follows:

*To the Assembly:*

Your committee on the judiciary, to which was referred by a resolution duly adopted on the 5th day of May, 1905, the matter of formulating rules of practice and procedure in the proceeding for the removal of Warren B. Hooker from the office of justice of the Supreme Court, pursuant to the provisions of section 11 of article 6 of the Constitution, together with a statement of the cause alleged for such removal, and report the same to the Assembly, respectfully submit the following report:

Proceedings for the removal of a judicial officer having never been heretofore had in this State under the provisions of section 11 of article 6 of the Constitution, relating to judges of the

Court of Appeals and justices of the Supreme Court, there were not in existence any forms or precedents for the practice or procedure, or for a statement of the cause alleged in this proceeding; therefore your committee has proceeded with great care and caution. As the Assembly had decided before referring this matter to your committee to take proceedings for the removal of Mr. Justice Hooker under the section and article mentioned, your committee were of the opinion that it would be very desirable to have harmonious action on the part of the two branches of the Legislature in this proceeding, and we therefore invited all the members of the committee on the judiciary of the Senate to meet and confer with your committee regarding the matters referred to it.

Several members of the Senate committee accepted such invitation and did meet and confer with your committee and other members of the Senate committee who were prevented by business engagements from so meeting and conferring have, by correspondence, been kept informed in regard to the progress of the work of your committee, and have expressed their approval of the course taken by your committee.

We have formulated a statement of the cause alleged for the removal of said Warren B. Hooker from said office, with allegations, specifications and statement of facts founded upon the evidence taken and facts and conclusions heretofore reported by your committee to the Assembly, May 1, 1905, and the same is marked "Schedule A," hereto annexed and made a part of this report.

We have also formulated a proposed concurrent resolution reciting the history of this proceeding, providing for the adoption by the Legislature of said statement of the cause alleged, allegations and specifications, for the service of the same on said Warren B. Hooker, and notification to him of the time and place when he may be heard thereon before the Legislature, leaving the date of such hearing to be fixed by the Legislature, which proposed concurrent resolution is hereto annexed, marked "Schedule B," and made a part of this report.

We have not formulated any further rules of practice or procedure, but recommend that the same be formulated, agreed upon and reported to the Legislature by the committee on the judiciary and President *pro tem.* of the Senate and the committee on the judiciary and the leaders of the majority and minority of the Assembly, respectively, all acting together.

Your committee further recommends the employment of counsel for the Legislature, of a stenographer or stenographers, and that there be extended to the Jamestown Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York and the Brooklyn Bar Association a like invitation to the one heretofore extended to said bar associations by the committee on the judiciary of the Assembly, in the investigation of this matter had by said committee.

ROBERT J. FISH,  
*Chairman.*

Dated, *June 21*, 1905.

CHAS. W. MEAD,  
N. W. WEMPLE,  
SHERMAN MORELAND,  
W. B. STEELE,  
F. G. WHITNEY,  
FRANK W. STANDART.

We concur in the foregoing report but believe that the matters in reference to the Dunkirk postoffice leases should be included in the statement of the cause alleged and specifications.

SEWARD SHANAHAN,  
EMANUEL S. CAHN.

#### SCHEDULE A

#### IN THE ASSEMBLY OF THE STATE OF NEW YORK.

In the Matter of the Proceedings for  
the Removal

of

WARREN B. HOOKER from the  
Office of Justice of the Supreme  
Court, Pursuant to the Provi-  
sions of Section Eleven of Article  
Six of the Constitution.

#### STATEMENT OF THE CAUSE ALLEGED FOR REMOVAL.

That the said Warren B. Hooker, while a representative in Congress, prior to the 10th day of November, 1898, and while a

when said Ball was made clerk, as hereinafter set forth, no person was appointed laborer to succeed him, until the appointment of Maurice Hooker to such position about three years later.

That the duties of laborer in said postoffice were slight and consisted of scrubbing the floor of the inside office and washing the windows; and that such duties had theretofore been performed by a scrub-woman at an expense not exceeding \$12 per year. That the appointment of Ball or any other person as such laborer was not requested by the postmaster at Fredonia and was unnecessary.

That said Ball was engaged continually in business as a railroad ticket broker in the city of Dunkirk, distant about three miles from Fredonia, from 1892 until long after his connection with the Fredonia postoffice ceased, excepting the period from September 1, 1897, to December 7, 1898.

That on the 9th day of January, 1899, said Warren B. Hooker, then a justice of the Supreme Court, was in the city of Washington, and after a conversation had between said Beavers and said Warren B. Hooker, and after a correspondence between them, all of which took place in the month of January, 1899, said Ball's position in the Fredonia postoffice was changed to clerk, on the 15th day of January, 1899. No such clerkship had theretofore existed and upon the resignation of said Ball no one was appointed in his place, and such change was not requested by the postmaster at Fredonia.

That the other clerks in said Fredonia postoffice were adequate to perform the work of said office, that there were no duties for said Ball to perform as such clerk, and that said Ball never reported for duty and never performed any services in said postoffice.

That said Ball was paid the salary attached to such positions until December 31, 1902, when he resigned, amounting to the sum of \$2,532.07, and that all of said sum except less than \$5 was used in paying principal and interest upon said note for \$3,040 hereinbefore mentioned and described; the practice being to renew the said note at intervals of three months, after applying thereon the checks received by Ball from the postmaster during the preceding quarter.

That on the 30th day of December, 1899, at a meeting of the board of directors of the Fredonia National Bank, duly held at its office, the following resolution was duly and unanimously adopted:



"Resolved, That the officers of this bank be and they are hereby authorized and instructed to accept the proposition of Etta E. Hooker to give \$24,000 of the capital stock of the Seneca Oil Company in full liquidation of her notes amounting to \$20,000, also the note of F. C. Laing amounting to about \$2,000 and to release her as endorser upon the notes of Charles Ehmke of about \$1,900, F. P. Ball about \$2,600 and William B. Barker about \$1,600, she turning over to the bank the security she holds for the Ehmke note. In addition to the above note of Warren B. Hooker of about \$31,000 held by this bank."

That shortly after said December 30, 1899, pursuant to the arrangement referred to in said resolution, the said Etta E. Hooker was duly released from all liability as endorser upon the said promissory note of Frank P. Ball, hereinbefore referred to. That when said note of Frank P. Ball was subsequently renewed from time to time as hereinbefore recited, the name of said Etta E. Hooker did not appear as endorser thereon and she was in no way liable thereon.

That when said Frank P. Ball resigned his position as clerk in the Fredonia postoffice December 31, 1902, there was unpaid on said note the sum of \$1,000 and when the same was last renewed on January 10, 1905, there was unpaid on the same about the sum of \$700; he having paid thereon, after Mrs. Hooker's release and before his resignation, about \$1,600 besides the interest; and he having paid thereon since his resignation about \$300 besides the interest.

That subsequent to the resignation of Frank P. Ball, as aforesaid, the said Melvin H. Taylor was required to and did pay back to the United States Government the sum of \$2,532.07 so paid as salary to said Ball. That thereafter the said Ball paid to said Taylor the sum of \$32.07 and gave said Taylor his promissory note for \$2,500 upon which he has since paid to said Taylor the sum of \$650.

## II.

That the said Warren B. Hooker, being then a justice of the Supreme Court and acting as such and residing at Fredonia, N. Y., in the month of January, 1902, suggested to one Maurice Hooker, a nephew of said Warren B. Hooker, then of the age of about 16 years and residing at Perrysburg, N. Y., and who was desirous of attending the State Normal School at Fredonia, N. Y., that he, said Warren B. Hooker, might be able to procure for his said nephew some position in which he, said

nephew, could earn something while he was so attending school. And that the said Warren B. Hooker did thereafter and in pursuance of such suggestion, with the aid, assistance and connivance of the above-named George W. Beavers, who was then superintendent of said Salaries and Allowance Division in the United States Postoffice Department, and of one Melvin H. Taylor, United States postmaster at Fredonia, Chautauqua county, N. Y., procure the appointment of said Maurice Hooker to the position of laborer in the United States postoffice at Fredonia, N. Y., at a salary of \$400 per annum, he, the said Warren B. Hooker, and said Beavers and Taylor well knowing that said appointment to such position was unnecessary, and that there was but very slight, if any, duties for said Maurice Hooker to perform as such laborer, and with the expectation and belief that he would be required to perform but slight, if any, duties in such position, by means of which appointment, procured as aforesaid, the said Maurice Hooker unlawfully drew and received from the United States Government the sum of \$600 without having rendered any service or given or paid any consideration therefor, and thereby the United States Government was unlawfully deprived and defrauded of said sum of \$600 as is more fully set forth in the following specifications and statement of facts relating to the same:

In the month of January, 1902, one Maurice Hooker, a nephew of said Warren B. Hooker, of the age of 16 years, then residing at Perrysburg, Cattaraugus county, N. Y., was desirous of attending the normal school in said village of Fredonia. Prior thereto and some time before the said Maurice Hooker commenced attending school at Fredonia he had a talk with the said Warren B. Hooker, who was then a justice of the Supreme Court, in which the latter said that he thought he could get him some position in which he could earn something while attending school. That said Melvin H. Taylor, the postmaster at Fredonia, was not acquainted with Maurice Hooker until in or about the month of January, 1902. That on or about the 11th day of January, 1902, said Warren B. Hooker, Melvin H. Taylor and Maurice Hooker arranged that said Warren B. Hooker and Melvin H. Taylor should procure the appointment of Maurice Hooker as a laborer in the Fredonia postoffice, at a salary of at least \$400 per annum. That the only duties of such laborer were to mop the floor of the inner office and clean the windows, all of which had theretofore been done by a scrub-woman at an expense of about \$12 per annum. That the appointment of Maurice Hooker

or any other person to the position of laborer in said postoffice was not necessary.

That in pursuance of such arrangement or understanding, said Warren B. Hooker and Melvin H. Taylor on the 11th day of January, 1902, wrote to said George W. Beavers, who was then general superintendent of the Salaries and Allowance Division of the United States Postoffice Department, requesting such appointment of said Maurice Hooker at said proposed salary. That said Beavers immediately thereafter caused said Maurice Hooker to be appointed laborer in the Fredonia postoffice at a salary of \$400 per annum, said Beavers and Taylor well knowing that such appointment was not needed and that the salary was grossly excessive for all the services such laborer could possibly perform.

That the said Maurice Hooker never reported for duty as such laborer, was never asked to report, never performed any service whatever, but held the position until July 1, 1903, a period of 18 months, during which time his salary amounted to \$600. That the said postmaster, Melvin H. Taylor, retained said sum of \$600 from moneys in his hands belonging to the United States, paid therefrom a small sum during each month to a scrub-woman for cleaning the postoffice, and paid the remainder of such salary, amounting to upwards of \$500, to said Maurice Hooker.

That said Maurice Hooker commenced attending the Fredonia Normal School in the month of January, 1902, and continued to attend said school until about July, 1903. That the said Maurice Hooker was dismissed from the service on or about July 1, 1903. That subsequent to such dismissal, said Melvin H. Taylor was required to and did pay back to the United States Government, said sum of \$600, so paid to the said Maurice Hooker, as salary. That before paying back and refunding said money to the United States Government, said Taylor informed said Warren B. Hooker that a demand had been made upon him for the repayment of all the moneys paid to Frank P. Ball and Maurice Hooker, as salaries, and said Warren B. Hooker replied that he, Taylor, had better do as he thought best about it.

That the said Warren B. Hooker, then being a justice of the Supreme Court, did, in the month of January, 1899, with the aid and connivance of said George W. Beavers, then chief of the Salaries and Allowance Division of the United States Postoffice Department, and Melvin H. Taylor, postmaster at Fredonia, N. Y., procure the appointment of Thomas O'Neil, Henry J. Pemberton, George Cooper and Ora Caldwell as clerks in the United

nephew, could earn something while he was so attending school. And that the said Warren B. Hooker did thereafter and in pursuance of such suggestion, with the aid, assistance and connivance of the above-named George W. Beavers, who was then superintendent of said Salaries and Allowance Division in the United States Postoffice Department, and of one Melvin H. Taylor, United States postmaster at Fredonia, Chautauqua county, N. Y., procure the appointment of said Maurice Hooker to the position of laborer in the United States postoffice at Fredonia, N. Y., at a salary of \$400 per annum, he, the said Warren B. Hooker, and said Beavers and Taylor well knowing that said appointment to such position was unnecessary, and that there was but very slight, if any, duties for said Maurice Hooker to perform as such laborer, and with the expectation and belief that he would be required to perform but slight, if any, duties in such position, by means of which appointment, procured as aforesaid, the said Maurice Hooker unlawfully drew and received from the United States Government the sum of \$600 without having rendered any service or given or paid any consideration therefor, and thereby the United States Government was unlawfully deprived and defrauded of said sum of \$600 as is more fully set forth in the following specifications and statement of facts relating to the same:

In the month of January, 1902, one Maurice Hooker, a nephew of said Warren B. Hooker, of the age of 16 years, then residing at Perrysburg, Cattaraugus county, N. Y., was desirous of attending the normal school in said village of Fredonia. Prior thereto and some time before the said Maurice Hooker commenced attending school at Fredonia he had a talk with the said Warren B. Hooker, who was then a justice of the Supreme Court, in which the latter said that he thought he could get him some position in which he could earn something while attending school. That said Melvin H. Taylor, the postmaster at Fredonia, was not acquainted with Maurice Hooker until in or about the month of January, 1902. That on or about the 11th day of January, 1902, said Warren B. Hooker, Melvin H. Taylor and Maurice Hooker arranged that said Warren B. Hooker and Melvin H. Taylor should procure the appointment of Maurice Hooker as a laborer in the Fredonia postoffice, at a salary of at least \$400 per annum. That the only duties of such laborer were to mop the floor of the inner office and clean the windows, all of which had theretofore been done by a scrub-woman at an expense of about \$12 per annum. That the appointment of Maurice Hooker

Mary L. Moore, chief clerk, \$800 per year; Charles H. Landers, 500 per year; Edwin R. Mixer, \$400 per year; Edwin W. Easton, 400 per year.

That such clerical force was adequate to properly take care of and perform the duties of the office, that they did so take care of and perform the duties of the office, and there was no necessity for the appointment of any additional clerks in said office. That on the 21st day of January, 1899, at the request of said Warren B. Hooker, made January 16, 1899, said Frank P. Ball had also been designated as clerk in said office as hereinbefore set forth; thus placing upon the roll of the office six additional clerks with no duties, at salaries of \$600 each per year.

That the said Minerva Jeffrey was then a resident of the city of Washington, had never been a resident of Fredonia, was a member of the family with which Beavers boarded or roomed and never at any time reported for duty or performed any service in the Fredonia postoffice. The checks in payment of her salary were regularly sent to her in Washington by the postmaster until June, 1899, at which time she was transferred to the Burlington, Vt., postoffice. The total amount thus paid to the said Minerva Jeffrey was \$251.66.

That Henry J. Pemberton and George Cooper were residents of Fredonia at the time of their appointment. That they were not, so far as appears, notified by any one of their appointment, never performed any service, were never paid anything, and their appointments were canceled by order dated May 8, 1899.

That Ora Caldwell was, at the time of his appointment, a resident of Fredonia, but did not report for duty or perform any service until July 3, 1899, since which date he has been regularly employed as a clerk in the office, taking the place of Edwin R. Mixer, who had been transferred to another office July 1, 1899. That the said Ora Caldwell was paid for the time between January 15, 1899, and June 30, 1899, the sum of \$276.66, but rendered no service whatever during that period and was not asked to render any service.

That Thomas O'Neil was at the time of his appointment a resident of the village of Fredonia, was then and had been for a considerable period of time in the employ of said Warren B. Hooker, caring for his horses and grounds and acting as his coachman. That said Thomas O'Neil continued in the employment of said Warren B. Hooker for some time after said appointment was made and rendered no service as such clerk. That he was ap-



States postoffice at Fredonia, N. Y., at a salary of \$600 each per annum, well knowing that there was no necessity for the appointment of said O'Neil, Cooper, Pemberton and Caldwell, or either of them and that there was no service to be performed by either of them therein; and that the reason and motive which influenced the said Warren B. Hooker in procuring the said appointment was that said O'Neil, Cooper, Pemberton and Caldwell or some of them might thereafter be retained in the classified service of the United States Government without having taken the examination provided for by the civil service laws of the United States, and that the said O'Neil, Cooper, Pemberton and Caldwell, or some of them, might receive the salary of \$600 per annum attached to said position of clerk without having performed any service therein; and that thereafter the said Thomas O'Neil did actually receive from the said United States Government, as salary as such clerk, the sum of \$126.66, without ever having rendered any service as such clerk; and the said Ora Caldwell did actually receive from the United States Government the sum of \$276.66 as salary as such clerk without ever having rendered any service as such clerk; and the said Thomas O'Neil, at the request of said Hooker, was appointed to the position of carrier in the said postoffice at Fredonia, N. Y., without having taken or submitted to a civil service examination; and that the United States Government was thereby unlawfully deprived and defrauded of the said sums of \$126.66 and \$276.66 so paid as aforesaid to the said O'Neil and Caldwell, and the provisions and intent of the United States civil service laws were violated and evaded, as is more fully set forth in the following specifications and statement of facts:

On or about the 9th day of January, 1899, the said Warren B. Hooker visited the city of Washington, D. C., and while there had a consultation with said George W. Beavers concerning the establishment of free delivery in the postoffice at Fredonia. That thereafter and on the 12th day of January, 1899, the said Beavers caused directions to be sent to the postmaster at Fredonia to appoint Thomas O'Neil, Henry J. Pemberton, George Cooper, Minerva Jeffrey and Ora Caldwell as clerks in his office, at a salary of \$600 per annum each, and in pursuance of such direction said appointments were made on the 17th day of January, 1899. That at the time such directions were given and said appointments were made there were actually employed in said postoffice in addition to the postmaster, four clerks with salaries as follows:

Mary L. Moore, chief clerk, \$800 per year; Charles H. Landers, \$500 per year; Edwin R. Mixer, \$400 per year; Edwin W. Easton, \$400 per year.

That such clerical force was adequate to properly take care of and perform the duties of the office, that they did so take care of and perform the duties of the office, and there was no necessity for the appointment of any additional clerks in said office. That on the 21st day of January, 1899, at the request of said Warren B. Hooker, made January 16, 1899, said Frank P. Ball had also been designated as clerk in said office as hereinbefore set forth; thus placing upon the roll of the office six additional clerks with no duties, at salaries of \$600 each per year.

That the said Minerva Jeffrey was then a resident of the city of Washington, had never been a resident of Fredonia, was a member of the family with which Beavers boarded or roomed and never at any time reported for duty or performed any service in the Fredonia postoffice. The checks in payment of her salary were regularly sent to her in Washington by the postmaster until June, 1899, at which time she was transferred to the Burlington, Vt., postoffice. The total amount thus paid to the said Minerva Jeffrey was \$251.66.

That Henry J. Pemberton and George Cooper were residents of Fredonia at the time of their appointment. That they were not, so far as appears, notified by any one of their appointment, never performed any service, were never paid anything, and their appointments were canceled by order dated May 8, 1899.

That Ora Caldwell was, at the time of his appointment, a resident of Fredonia, but did not report for duty or perform any service until July 3, 1899, since which date he has been regularly employed as a clerk in the office, taking the place of Edwin R. Mixer, who had been transferred to another office July 1, 1899. That the said Ora Caldwell was paid for the time between January 15, 1899, and June 30, 1899, the sum of \$276.66, but rendered no service whatever during that period and was not asked to render any service.

That Thomas O'Neil was at the time of his appointment a resident of the village of Fredonia, was then and had been for a considerable period of time in the employ of said Warren B. Hooker, caring for his horses and grounds and acting as his coachman. That said Thomas O'Neil continued in the employment of said Warren B. Hooker for some time after said appointment was made and rendered no service as such clerk. That he was ap-

- pointed carrier at said office about April 1, 1899, and since April 17, 1899, has performed regular service as carrier. That the said Thomas O'Neil performed some slight duties in reference to placing mail boxes and laying out routes during two weeks preceding April 17, 1899. That he was paid salary as clerk for the time between the 15th of January, 1899, and April 1, 1899, the sum of \$126.66, for which he rendered no service whatever as clerk, being for at least a portion of said time in the employ of said Warren B. Hooker.

That the said appointments of O'Neil, Caldwell, Pemberton and Cooper were made at the instance and request of said Warren B. Hooker and pursuant to an arrangement between him and said George W. Beavers, and were not requested to be made by the postmaster at Fredonia. Prior to the appointment of said O'Neil and Pemberton, as aforesaid, each of them had requested said Warren B. Hooker to secure him a position.

That the said Warren B. Hooker, then being a justice of the Supreme Court, did, in the month of December, 1899, and with the aid and connivance of George W. Beavers, then chief of the Salaries and Allowance Division of the Postoffice Department of the United States Government, and Melvin H. Taylor, postmaster at Fredonia, N. Y., procure the appointment by Emil Rebell, postmaster at Fort Plain, N. Y., of one Katherine K. Clark, a resident of the village of Fredonia, to the position of clerk in the postoffice at Fort Plain, N. Y., at a salary of \$400 per annum, well knowing that there was no service for the said Clark to perform in said position and that she was not to perform any service in such position; and did corruptly and unlawfully solicit and request the said Beavers to pay or cause to be paid to said Clark the salary attached to her said position of clerk, well knowing that said Katherine K. Clark had not performed any service therein and was not entitled to such salary; and did thereafter, and in April or May, 1900, with the aid and connivance of said Beavers, procure the transfer of said Clark from the said postoffice at Fort Plain to a position as clerk in the postoffice at Fredonia, N. Y., at a salary of \$600 per annum, well knowing that there was no necessity for her appointment as such clerk and well knowing that she had not taken the examination required by the civil service laws of the United States; and that the reason and motive which influenced the said Hooker in procuring such appointment of said Clark and her said transfer was that the said Katherine K. Clark might become eligible to an appointment as clerk in the Fredonia, N. Y., postoffice, and might draw and receive the salary of such

clerk from the United States Government without being required to pass any civil service examination prior to receiving such appointment; by which such appointment and transfer the provisions and spirit of the civil service laws of the United States were violated and evaded; and that the reason and motive which influenced the said Hooker in soliciting and requesting the payment of said salary to said Clark was that the United States Government might thereby be defrauded of the amount of said salary, as is now fully set forth in the following specifications and statement of facts:

On the 9th day of November, 1899, upon the recommendation of said Warren B. Hooker, Melvin H. Taylor was appointed postmaster at Fredonia, and shortly thereafter it was understood and arranged between said Warren B. Hooker and said Melvin H. Taylor that one Katherine K. Clark, a niece of Taylor's wife, should be appointed a clerk in said postoffice. That at the time of the making of such agreement the clerical force at said office was adequate to take care of and transact all the business therein, and there was no necessity for the appointment of said Katherine K. Clark as a clerk in said office.

That the said postoffice at Fredonia was in the classified service and the only method by which the said Katherine K. Clark could be appointed to a clerkship therein, without submitting to a civil service examination, was to have her appointed a clerk in some office not in the classified service, which was about to be placed in such classified service, and after such last-mentioned office had been placed in the classified service, then to have said Katherine K. Clark transferred to the Fredonia postoffice.

That said Warren B. Hooker ascertained in some manner that the postoffice at Fort Plain, N. Y., was to be placed in the classified service early in the year 1900, and thereupon entered into communication with the said George W. Beavers with the purpose of inducing the said Beavers to have said Clark appointed to a clerkship in said Fort Plain postoffice. That said Beavers, in pursuance of the request of said Warren B. Hooker, did, on or about the 13th day of December, 1899, cause the said Katherine K. Clark to be appointed to a clerkship in the said postoffice at Fort Plain. That there was no intention upon the part of said Warren B. Hooker, Taylor, Beavers or Clark that the said Clark should actually perform any service in said postoffice at Fort Plain. That the said Clark, both before and after her appointment to such clerkship at Fort Plain, resided and continued to reside at Fredonia, and did not go to Fort Plain and did not perform any

service in the postoffice at that place. That the salary attached to her said clerkship at Fort Plain was the sum of \$400 per year.

That thereafter and on the 12th day of April, 1900, the said Warren B. Hooker wrote and transmitted to the said Beavers a letter, of which the following is a copy:

"SUPREME COURT OF NEW YORK,  
FREDONIA, N. Y., April 12, 1900.

Personal.

Mr. GEORGE W. BEAVERS, *P. O. Department*:

My Dear Beavers.—I notice by the press that you have returned and I sincerely hope you had a pleasant and restful vacation.

Now that you are on the ground again I beg to call your attention to two or three matters. In your letter which you sent me of February 3d you indicated that there was no probability of any change in the rural deliveries at Hamlet, Chautauqua county, and Perrysburgh, Cattaraugus county, New York. I am very anxious they should remain as they have been established.

I also beg to call your attention to the matter of the appointment of Miss Katherine K. Clark to a clerkship at Fort Plain, N. Y., in Congressman Sherman's district. What I wish to have done is, for the postmaster at that place to send her check, or send it to you, and you can send it to her, and then you transfer her to Fredonia. We will appreciate this very much if you can take it up and have it done very soon.

Thanking you in advance, I am,

Very sincerely yours,

W. B. HOOKER.

P. S. I would like to have you procure for the postmaster at Fredonia, 4 paper and package boxes, and 6 small letter boxes."

That at the time of writing and sending said letter, said Warren B. Hooker knew that said Katherine K. Clark had rendered no service at Fort Plain and was not entitled to any sum whatever for salary as clerk in said office.

That on or about May 1, 1900, at the request of said Warren B. Hooker, the said Katherine K. Clark was transferred by said Beavers from the postoffice at Fort Plain to the postoffice at Fredonia, where she rendered service until about August, 1903,

at which time she was reduced to the position of substitute clerk in said office. That before, during and after the time of the employment of said Katherine K. Clark in said postoffice her services as clerk were unnecessary therein, for the reason that the clerical force in said office was adequate to discharge all the duties in said office without her assistance, and that the payment to said Katherine K. Clark of her salary during the time of her employment as clerk in said office was an unnecessary and wasteful use of the moneys of the United States.

The salary attached to the position held by said Katherine K. Clark in the Fort Plain office was \$400 per annum. Upon her transfer to the Fredonia office her salary was at once increased to \$600 and a direction made by said Beavers that the same be increased to \$700 on and after July 1, 1900.

On the 14th day of March, 1901, the salary of said Katherine K. Clark was increased from \$600 to \$700; on the 3d day of August, 1901, the same was increased to \$800; on the 28th day of January, 1902, the same was increased to \$900; and on the 1st day of March, 1902, the same was increased to \$1,000; all of said increases having been made by direction of said Beavers and upon the application of said Melvin H. Taylor.

#### V.

That the said Warren B. Hooker, then being a justice of the Supreme Court, did, in the month of January, 1902, with the aid and connivance of one Lester F. Stearns, who was a tenant in common or copartner with said Hooker in the ownership of certain real property situated in the city of Dunkirk and a portion of which had theretofore been leased by them to the United States Government for a postoffice, and others, in an action in the Supreme Court of the State of New York, wherein one Charles J. Wirtner, a citizen of the city of Dunkirk, Chautauqua county, N. Y., was plaintiff and the city of Dunkirk, said Warren B. Hooker, Lester F. Stearns and others were defendants, procure and cause to be entered in said action, a corrupt, fraudulent and illegal judgment against the city of Dunkirk, which judgment was entered in the clerk's office of Chautauqua county on the 24th day of January, 1902, and which judgment purported to restrain and enjoin the city of Dunkirk from erecting any building or structure upon a certain portion of the City Hall Park, so-called, belonging to said city and adjacent to the real property of said Hooker and Stearns above mentioned as more

fully appears in the second conclusion of law upon which said judgment purports to have been founded and which is herein-after set forth and which said judgment was so procured to be entered with the motive and object of deterring or preventing said city from the erection of any building or buildings upon its said City Hall Park which would obstruct the passage of light and air into or through the building of said Hooker and Stearns on their said real property and thereby enhancing the usefulness and market of their said real property, as is more fully set forth in the following specifications and statement of facts:

In the years 1901 and 1902, the said Warren B. Hooker and one Lester F. Stearns were the owners of a certain building and premises situate in the city of Dunkirk, N. Y., immediately adjoining the City Hall Park. Said building was erected during the summer and fall of 1901, and was completed in said fall of 1901, and is the same building hereinbefore referred to, a portion of which was leased to the United States by said Hooker and Stearns for a postoffice. The architecture of said building, next to said City Hall Park, was of an ornamental character and design and the same was constructed in such a manner that the light for the same substantially all came from windows, of which there are a large number, on the south side thereof and next to said park.

That on the 3d day of December, 1901, the common council of the city of Dunkirk adopted a resolution which provided as follows:

"Resolved, That the mayor and city clerk be and they are hereby authorized and directed, for and in consideration of the sum of one dollar (\$1), to be paid to the said city of Dunkirk by Lester F. Stearns and Warren B. Hooker, and for and in consideration of the increase in value to the City Hall Park and property and the increase in value of other property in the city in the neighborhood thereof, and of the benefits to all of said property and to the inhabitants and people of the city of Dunkirk which have been received and acquired in consequence of the erection of the new building upon the northerly side of the said City Hall Park, known as the Stearns building, by Messrs. Stearns and Hooker, and for other good and valuable considerations, forthwith to execute and deliver a lease unto the said Lester F. Stearns and Warren B. Hooker, and to their heirs, executors, administrators or assigns of the free and uninterrupted right, use and easement for light and air of, in, on, over and along all that part of the city hall property lying and being

along the north side thereof and being fifteen (15) feet in width, running from Central avenue easterly to the present west line of the city hall building and ten (10) feet in width running from said west line of said city hall property east to Lynx street, conditioned, however, that this lease shall absolutely terminate when the city of Dunkirk shall make a bona fide legal sale and conveyance of the whole of said City Hall Park, and further conditioned that this lease shall also terminate whenever, after the city shall have used substantially all that part of said City Hall Park not covered by this lease, it becomes necessary to use said strip of land fifteen feet wide from Center street to the west line of said hall and ten feet wide from that point to Lynx street along the northerly side of said park upon which to construct and erect additions to the city hall to meet the actual requirements for city purposes and not fire hall purposes.

"Said lease or agreement, however, to provide and be conditioned that the said lessors nor their heirs, executors, administrators or assigns, shall under and by virtue thereof, receive, have or acquire no greater or other right than said right to the non-interference with said light and air and shall not receive or acquire by virtue of said contract any right whatever to the physical use or possession of the above described property or to go upon the same for any purpose, provided, however, that the same shall not in any manner lessen or affect the rights of said Stearns and Hooker in and along said north line of said property to eaves and area boxes, heretofore acquired."

That thereafter and on the 13th day of December, 1901, the mayor of said city of Dunkirk vetoed said resolution and returned the same to said common council without his approval.

That thereafter and on the 17th day of December, 1901, the said common council of the city of Dunkirk, by a vote of at least two-thirds of all the members elected thereto, voted to sustain said resolution, notwithstanding said veto, and passed and adopted the same over the veto of the mayor.

That thereafter and on or about the 19th day of December, 1901, one Charles J. Wirtner, a resident, citizen and taxpayer of said city of Dunkirk, commenced an action in the Supreme Court of the State of New York against Daniel Scannel, as mayor of the city of Dunkirk; Jacob Groesch, as clerk of the city of Dunkirk; Paul Weiss and several others, members of the common council of the city of Dunkirk; and Lester F. Stearns and said Warren B. Hooker, to restrain the execution and delivery of the lease referred to in said resolution of the common



council, upon the ground that the same was illegal and unauthorized by law, was without consideration, and contemplated a waste of the property of said city.

That one Thomas H. Larkins was the attorney for the plaintiff in said action, and the venue of said action was laid in the county of Chautauqua.

That the summons and complaint in said action were personally served upon all the said defendants, on or before December 23, 1901. That none of the defendants in said action appeared or served an answer to the complaint, except the said defendants Warren B. Hooker and Lester F. Stearns, who appeared by their attorney, Elton D. Warner, Esq., and served an answer which was verified by the defendant, Lester F. Stearns, on the 30th day of December, 1901.

That said answer did not demand any affirmative relief against the city of Dunkirk and was never served upon the city of Dunkirk or its attorney.

That in the second count or subdivision of said answer there were recited and set out, as a separate answer and defense, many of the facts which were subsequently proved upon the trial of the action, as hereinafter recited, and which were subsequently recited and found in the decision made and filed, as hereinafter recited.

That the said Warren B. Hooker conferred and advised with the said Lester F. Stearns concerning the said answer and assisted in the preparation of the same.

That Truman C. White, of Buffalo, N. Y., is one of the justices of the Supreme Court in and for the Eighth Judicial District, and was such justice in January, 1902. That within two or three days prior to January 21, 1902, the said Warren B. Hooker called upon the said White, at the chambers of the latter in the city of Buffalo, and told him that there was a case coming down from Dunkirk or from Chautauqua county, in which said Hooker was personally interested, and asked said White to hear the case when it came. Said Hooker also told said White, in substance, that he did not think there would be any substantial contest in court, that the parties were coming down to try it and that it would not take long.

On the 21st day of January, 1902, the said Thomas H. Larkins, attorney for the plaintiff, the defendant Lester F. Stearns and his law partner and counsel, Mr. Bert C. Farnham, appeared before Justice White at his chambers, and the trial of the case proceeded. Said Farnham was, at the time of said hearing, the

city attorney of the city of Dunkirk, but did not appear for said city and did appear as counsel for the defendants Hooker and Stearns. That before the trial commenced, said Stearns stated to Justice White that the parties had substantially agreed upon what should be done in the case.

Upon such hearing and trial, the plaintiff offered no evidence, and the only witness sworn was the defendant Stearns. After administering the oath to the witness, Justice White directed the parties to go before his stenographer and give their proofs, and paid little, if any, attention to the evidence. The evidence was taken by the stenographer and was not read over nor its substance stated to Justice White.

Thereafter, and probably on the same day, a decision in writing, containing findings of fact and conclusions of law, was presented to Justice White by said Stearns and Larkins, and said White signed the same and delivered it to said Stearns without having read it and without being informed of its contents.

Said decision, with the judgment roll in said action, was filed in the Chautauqua county clerk's office on the 24th day of January, 1902, and judgment entered thereon.

The decision signed by Justice White and filed with the judgment roll as aforesaid, contained, among other things, the following conclusions of law:

"Second. That the present city hall property, located at the corner of Central avenue and Fourth street, in the city of Dunkirk, N. Y., shall not be further encroached upon by extensions or additions, or by the building of further structures thereon, but shall be kept intact in its present condition until such time as it shall become necessary for the city of Dunkirk to use the same for the legitimate and necessary purposes of the city for city hall property, and that when such time shall arrive in so further utilizing the unoccupied land now constituting the park around and about the present city hall, the same shall be so built upon and used in such a manner as not to unnecessarily work a manifest or substantial injury to the adjacent building upon the north side thereof, now owned by the defendants Lester F. Stearns and Warren B. Hooker, known as the Stearns building, in the way of deprivation of light and air or otherwise, but that in so utilizing any portion of such park or premises about the city hall in the manner aforesaid, so far as practicable and possible, such parts or portion of the same shall be so utilized from time to

time as will least interfere with the enjoyment of said premises of the defendants Stearns and Hooker, on the north side thereof, or to work an injury thereto, or in the diminution in the value thereof, and that in no event will the southwest corner thereof, being that portion now bounded upon the east by the city hall and upon the north by the stone walk running at right angles to Central avenue, from the Central avenue entrance to the street, be utilized until finally necessary, nor shall any structure or extension be placed along the north side of said city hall park property at any time within fifteen feet of the north line thereof, until the absolute necessities of the city shall demand and require such use for city hall purposes; except that that portion of City Hall park on the northerly side thereof, and running west from Lynx street fifty feet and north of the city hall twenty-five feet shall be the first property used for additions to the present city hall building, and within the said dimensions of twenty-five feet in width bounding on Lynx street, by fifty feet in length."

That the judgment entered in said action purported to restrain the city of Dunkirk from erecting any building or structure upon said City Hall park, in the same manner and to the same extent as recited in said second conclusion of law.

That on the 25th day of November, 1904, an order was granted at a Special Term of the Supreme Court, held at the city of Buffalo, Justice White presiding, by which said judgment was vacated, set aside and annulled, and the findings of fact and conclusions of law, made by Justice White as aforesaid, were canceled; and said order was duly entered in the Chautauqua county clerk's office on the 26th day of November, 1904. This order was granted upon a stipulation bearing date November 2, 1904, signed by Warren B. Hooker, Lester F. Stearns, Thomas H. Larkins and Charles J. Wirtner. Said stipulation was prepared by said White and signed by said parties at his instance and request, after an inquiry instituted by him in or about the month of April, 1904.

Ordered, That said report be referred to the committee on the judiciary.

Mr. Raines moved that the Senate stand in recess until four o'clock p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## FOUR O'CLOCK AND THIRTY MINUTES.

The Senate again met.

Mr. Brackett offered the following:

Resolved (if the Assembly concur), That when the Legislature adjourn today it be to meet on Wednesday, June 28th, at 3 o'clock p. m.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative, as follows:

Those who voted in the affirmative were:

Brackett	Elsberg	Goodsell	Kehoe	McEwan	
Burr	Fancher	Grady	Lewis	Prime	
Cullen	Fechter	Hasenflug	Marks	Riordan	
Davis	Fitzgerald	Hawkins	Martin	Saxe	
Dooling	Frawley	Keenan	McCarren		24

Those who voted in the negative were:

Allds	Cassidy	Cordts	Malby	Tully	
Armstrong	Cobb	Drescher	Page	Warnick	
Brown	Coggeshall	Gates	Raines	Wilcox	
Carpenter	Cooper	L'Hommedieu	Stevens		19

A message from the Assembly was received and read in the words following:

Resolved (if the Senate concur), That the committee on the judiciary and President *pro tem* of the Senate, and the committee on the judiciary with the leaders of the majority and minority respectively of the Assembly, be and they are hereby authorized and directed to formulate rules of practice and procedure in the proceeding, under section 11 of Article VI. of the Constitution, for the removal of Warren B. Hooker from the office of justice of the Supreme Court, and report the same to the Legislature; and that the said committee be authorized and instructed to employ counsel for the Legislature and a stenographer or stenographers in said proceeding.

Ordered, That said resolution be referred to the committee on finance.

Mr. Raines moved that the Senate stand in recess until eight o'clock this evening.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## EIGHT O'CLOCK P. M.

The Senate again met. The Temporary President in the Chair.

The Assembly returned the resolution relative to the adjournment of the Legislature until Wednesday, June 28, with a message that they had concurred in the same.

Mr. Malby moved that the Committee on Finance be discharged from the further consideration of the resolution relative to the formulation by the Committees on the Judiciary of the Senate and Assembly of rules of practice and procedure.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative, as follows:

Those who voted in the affirmative were:

Allds	Cordts	Foley	Kehoe	McEwan
Armstrong	Cullen	Gates	Lewis	Prime
Brown	Davis	Goodsell	Malby	Raines
Carpenter	Fancher	Grady	Martin	Saxe
Cobb	Fechter	Hasenflug	McCarren	Wilcox
Coggeshall	Fitzgerald	Hawkins		

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Ordered. That said motion be returned to the Clerk of the Assembly.

Mr. Malby moved that the Senate do now adjourn.

Mr. President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

WEDNESDAY, JUNE 28, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. John J. Lawrence.

The journal of June 21, was read and approved.

Mr. Davis, from the committee on the judiciary, presented the following:

## STATE OF NEW YORK. IN SENATE.

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In the Matter of the charges

*against*

WARREN B. HOOKER, a Justice  
of the Supreme Court.

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} Opinion.

BRACKETT. Senate.

There are five charges made against Judge Hooker, upon which his removal as a Justice is asked.

They are these:

First. In procuring the appointment of Frank P. Ball as laborer in the postoffice at Fredonia, and thereafter, while a Justice, of procuring his (Ball's) appointment as clerk in the same postoffice, when there was no necessity for such appointment, nor service to be performed, by which the United States was defrauded of \$2,532.07,—the motive being to enable Ball to pay a promissory note of \$3,040 endorsed by Judge Hooker's wife.

Second. In procuring the appointment of Maurice Hooker, his nephew, as laborer in the postoffice at Fredonia, at a salary of \$400 a year, such appointment being unnecessary, whereby the United States was defrauded of the sum of \$600.

Third. Procuring the appointment of Thomas O'Neil, Henry J. Pemberton, George Cooper and Ora Caldwell, as clerks in the postoffice at Fredonia, at a salary of \$600 each, when there was no necessity for such appointment, and no services to be performed by either of them, the motive being that said persons, or some of them, might, thereafter, be retained in the

classified service of the United States, without having taken the examination provided by the civil service laws, and that they might receive the salary without having performed any service therefor. O'Neil received \$126.66, Caldwell \$276.66, and O'Neil was thereafter appointed a carrier without the examination, in evasion of the Civil Service Law. Thereafter, while Judge Hooker was a Justice of the Court, O'Neil, Pemberton, Cooper, Miss Jeffery and Caldwell were appointed clerks in the Fredonia postoffice, at an annual salary of \$600 each, the clerical force being at the time adequate to properly perform the duties of the office. Frank P. Ball was also appointed a clerk January 12, 1899, at Judge Hooker's request. Miss Jeffrey was a resident of Washington and never reported for duty at the postoffice. She resided in Washington and was a member of the family where George W. Beavers, who made the appointment resided. In June, 1899, she was transferred to the Burlington postoffice. The total amount paid to her was \$251.66. Pemberton and Cooper were never notified of their appointment, and the appointments were cancelled May 8, 1899. Caldwell did not perform any services until June 3, 1899, since which date he has been regularly employed. He received \$276.66 without rendering service. O'Neil was coachman for Hooker and rendered no service as clerk in the postoffice. He was appointed carrier April 1, 1899, and since April 17 has performed regular service as such. He received \$126.66 without rendering any service, being a portion of the time in Hooker's employ. All these were made without the request of the postmaster.

Fourth: Procuring the appointment, at the Fort Plain postoffice, of Katherine K. Clark, as clerk, at an annual salary of \$400, knowing that there was no service to be performed by her, and soliciting that she be paid such salary without performing any service. Procuring (in May, 1900) her transfer from Fort Plain to Fredonia, at a salary of \$600 a year, knowing that there was no necessity for such appointment, the motive of the original appointment being that she might become eligible as clerk in the Fredonia postoffice and draw the salary without being required to pass the civil service examination. Katherine Clark was a niece of Taylor, the postmaster at Fredonia. April 12, 1900, Judge Hooker wrote to Beavers (who made the several appointments) as to sending a check to Miss Clark, and also about having her transferred, knowing that she had not performed any services at Fort Plain. May 1, 1900 she was transferred to the

Fredonia postoffice and rendered service until August, 1903, when she was reduced to the position of substitute clerk. Her service as clerk was unnecessary and payment to her constituted waste. March 14, 1901 the salary was increased to \$700. a year; August 3, 1901, to \$800; January 28, 1902, to \$900; March 1, 1902, to \$1000, the increase being made by Beavers at the request of the postmaster.

Fifth: While a justice of the Supreme Court (in January 1902) procuring to be entered a corrupt, fraudulent and illegal judgment against the city of Dunkirk, restraining the city from erecting any building in a certain portion of the City Hall Park, belonging to the city, adjacent to property of Hooker and Stearns, the motive being to prevent the erection of a building in said park that would obstruct the passage of light and air into the building of Hooker and Stearns.

As to this it is alleged, that December 3rd, the Common Council of the city of Dunkirk passed a resolution giving to Stearns and Hooker a lease of the easements of light and air for fifteen feet in width on said park. The mayor vetoed it and the Common Council passed it over the veto. Thereafter, Wirtner, a taxpayer, commenced an action against the city, the councilmen, and Hooker and Stearns, to restrain the waste which it was claimed would accomplished by said lease. Hooker and Stearns alone answered and Hooker conferred and advised with Stearns concerning the answer. A few days prior to January 1, 1902, Hooker called on Judge White in Buffalo and said that there was a case coming on, in which he was personally interested, and asked Judge White to hear the case, and said that he did not think there would be any substantial contest in court. January 21st the attorney for Wirtner, and Stearns and his law partner Famham, appeared before Judge White and tried the case, Stearns' partner was at the time of the trial the city attorney, but did not appear for the city in the action. Stearns told Judge White that they had substantially agreed upon what should be done in the case. A decision was signed by Judge White without giving it much attention, and a judgment entered thereon, prohibiting the city from erecting any building on the strip of land in question in the City Hall Park. November 23, 1904, Judge White made an order annulling the judgment. This was upon a stipulation signed by Hooker, Stearns and Wirtner and his attorney, the stipulation being prepared by Judge White and being signed at his request.



Removal from office of Judge Hooker is sought on these charges, under section 11 of article 6 of the Constitution of the State, which section reads in part as follows: "Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. \* \* \* But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard."

The Assembly has passed a concurrent resolution approving a formulation of the cause alleged for removal, and adopting it, and entering it upon its journals, and directing that a copy of the same, and of the resolution, be served upon Judge Hooker, and fixing the time and place of the hearing.

This resolution coming to the Senate has been referred to its committee on the Judiciary, and that committee having asked for time to consider and determine the question as to whether the constitutional provision quoted before is intended to meet a case of the kind presented by the statement of the alleged causes for removal reported from the Assembly, its members have examined the question.

So far as I have been able to discover in the limited time since the adjournment of the Senate, the case is without precise precedent in the State. That it is an important question every one will concede, involving as it does a practical construction of the constitutional provision providing for removal of a judge by joint resolution of both houses of the Legislature, upon the right decision of which question depends, it is claimed on the one side, the independence of the judiciary of the State, on the other, the right of the people to purge its judicial system from the incumbency of any man who has been guilty of dishonorable dealings, although such dealing is not in the exercise of his functions as a judge, but relates to him solely as an individual.

Recurring then to the section of the Constitution under consideration, "What does it mean?"

These rules of the construction of statutes are cardinal.

a. The intention of the lawmakers must be sought for. That

is the grand central light in which all statutes must be read. A multitude of cases might be cited in support of this doctrine.

Josh v. Marshall, 33 App. Div., 77, 80.

Durham v. Sage, 52 N. Y., 229, 230.

Hudson Iron Co. v. Alger, 54 N. Y., 173-175.

Duryea v. Mayor, 96 N. Y., 477, 495, 496.

b. The current of authority is in favor of reading statutes according to the most natural and obvious import of the language, without resort to subtle and forced constructions for the purpose of either limiting or extending their operations.

Chamberlain v. Western Trans. Co. 44 N. Y. 305-9-10.

Waller v. Harris, 20 Wend. 555, 5621, 562.

Matter of Bridge, 72 N. Y. 527, 529, 530.

While there are many exceptions to this statement of the rule in its breadth, the exceptions are only applied in search of the real intent of the law makers, and the rule still exists in its integrity.

c. The circumstances existing at the time of the passage of the act, and which led to its passage, may be regarded for the purpose of furnishing something in the nature of a guide to its proper construction and interpretation.

O'Brien v. Mayor, 139 N. Y. 543, 588.

and reference to the historical growth of the legislation and to contemporaneous exposition is proper, if there is doubt in reading the act.

Fire Dept. v. Stanton, 159 N. Y. 225, 229.

d. Effect must be given to all the language of the act and the intent is to be deduced from the whole act.

Matter of Bridge 72 N. Y. 527, 530.

People v. McGloin, 91, N. Y. 241, 250.

People v. Matsell, 94 N. Y. 179, 183

and acts in *pari materia* may always be referred to, to ascertain the intention of the Legislature in any given case, as may too contemporaneous legislation not precisely *pari materia*.

Smith v. People, 47 N. Y. 330, 339.

And it is, of course, true that the same rules of construction apply, in considering a constitutional provision, as to the construction of a statute.

*Settle v. Van Evra*, 49 N. Y. 280, 281.

Having in mind these teachings of legal hermeneutics, we may look not only to the language of the section itself, but to its history; we must read the provision in its natural way, acceding to the obvious import of its language, and seek to give effect to all its parts.

On its face the power of removal is given by the section in very broad terms. Any judge or justice named, may be removed by a concurrent resolution of both Houses, subject to three things, and three only i. e. he must be heard, two-thirds of all the members elected to each House must concur, and the removal must be for cause, which must be entered on the journals, so that all the world may know what the cause is; and whether good or bad.

What shall constitute cause is left entirely open. No attempt is made to define it in the section. It rests, and I think must rest, under this language, in the breast of every member of the Legislature to decide on his oath, what shall constitute "cause," and whether the cause alleged in any given case is sufficient, and if two-thirds concur in sustaining a charge, removal must be had. The decision may be wrong, the cause alleged insufficient in fact and in right, but the same effect must be given to the decision, though wrong, as is given to the decision of every decision of the court of last resort, even if wrong, for there is no appeal.

I can find no warrant in the language of the section for the claim that it was intended to limit this right of removal to cases of physical, or mental, incapacity. There is no such express limitation, and where the instrument is plain and unambiguous we are not permitted to seek obscure construction, nor any construction; the language must have its effect.

*People ex rel Bowen v. Jones*, 63 N. Y. 306-309.

Illustrations will occur to those who argue on each side of the question. It is sufficient for me here to say that a judge may so comport himself in matters entirely outside the performance of his judicial duties, as to render it important for the decency of the judiciary, and of consequence to its reputation, and the respect due to it, that he should be removed—an hundred times more of consequence than the loss of his reason, or of some of his senses.

The mere failure to render service to the people by reason of infirmities, physical or mental, may be largely made up by the performance of his work by his judicial brethren; the injury to the office by grossly immoral, although not criminal, conduct is beyond repair.

The history of the section and the discussions contemporaneous with its consideration and adoption confirm this construction.

This provision of the Constitution first came into our organic law in the Constitution of 1821. It came to us from the Mother country. There, all judges were originally appointed by the king, and held office as long, and on such conditions, as he was pleased to prescribe. Some held as long as they behaved well, *quamdiu se bene gesserint*; others during the pleasure of the king, *durante bene placito*. This made the judges mere creatures of the king, and to change this and secure the independence of the judiciary, after the revolution of 1689, the Act of Settlement, provided that the king should not have the power to remove judges, but that they should hold office during good behavior. But they still remained removable by the king on address from both houses of parliament.

Hallam in his Constitutional History (American edition, page 597), states the rule, "No judge can be dismissed from office except in consequence of a conviction for some offense, or the address of both houses of parliament, which is tantamount to an act of legislature."

The language of the section as it came into our Constitution in 1821 was this, it being section 13 of Article I. "All officials holding their offices during good behavior, may be removed by joint resolution of the two Houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein."

By section III. of Article Fifth of that Constitution, justices of the Supreme Court held office during good behavior, until sixty years of age. There was already in the Constitution when this was added a provision for impeachment, but to render a judge liable to impeachment, (section XXXIII., Constitution of 1777.) it was necessary to prove that he had been guilty of misconduct in his official capacity.

It is manifest, therefore, that in adopting this additional provision in the Constitution of 1821, it was intended to provide for some other case than those covered by the already existing provision for impeachment.

The mere fact that another way was provided is *prima facie* evidence that it was intended to lay a broader foundation for removal, for, if this is not so, why was this additional method provided?

If, in the performance of his judicial duties, a judge had outraged the laws of the State, whether statutory, or the principles of the common law, he could already be impeached, and when, going further, another remedy was provided, it must be because the people intended by this provision to keep in themselves the power of removal, even if official misconduct was not shown.

The debates held upon the provision, in the constitutional convention of 1821, reinforce this view.

Mr. King, speaking of this provision, when under consideration in the Convention, said that all he wished was to accommodate the regulations, in some degree, to public opinion, which on this matter had undergone, and was undergoing, somewhat of a change in this country. There was danger of pushing the principle of the independence of the judiciary to such a length as to destroy it. Nay, more, so as to destroy the institution itself. If we wished to preserve the judiciary as handed down to us by our ancestors, we must concede something to the public opinion of the state as to the responsibility of the judiciary. There was throughout the country a universal respect and love for those venerated men who administered its justice. So long as they behaved well, no class of public men would be more secure of the public esteem and confidence. He would preserve to them that confidence by abstracting them from all other concerns and giving them fixed and adequate salaries, so as to relieve them from all solicitude, except for the faithful performance of their duty, but at the same time it was the part of true esteem to follow, and sometimes to anticipate, the public opinion on this and other subjects connected with our establishments and it could not be concealed that the people of the state were dissatisfied with the existing means of enforcing the responsibility of judges for the possible abuse of their great powers.

The judiciary department is the only one over which the people have no direct control. The legislative and executive departments are directly responsible to the people, and while he admitted the necessity of giving the judges an independent tenure, he questioned whether the people rested secure in the delegation of the judicial power, which touched so directly life and character and property. There should be a supervisory authority over them,

which should always be vigilant, and some times even vindictive. It should be swift to punish their offenses and to preserve the purity of the judicial character from contamination of its members. The time may come when the authority ought to be exercised, and if it be not possible, then all that has been said about checks, and balances, and responsibility, is idle and un-availing.

We have here a clear indication on the part of the eminent gentleman speaking, that it was the intention to have a very much more direct responsibility to the people on the part of the judges than then obtained, with only the provision for impeachment in the Constitution.

Indeed, he went further, and, citing the instance where the commons had demanded of the King the dismissal of the younger Pitt early in his career, and his removal from his Majesty's councils and presence, because he had lost their confidence, and on that ground alone, Mr. King thought that it ought to be the right of the representatives of the people to remove without being required to prefer specific charges, and that, when it was evident that judges had justly forfeited the public confidence, there ought to be a power of removal somewhere.

Mr. Radcliff commented on the fact that it would be as well to expunge entirely the power of impeachment, as to suffer it to remain as it was, since a third of the legislature would always be found to sustain an individual of eminence and standing.

Mr. Livingston alluded with some bitterness to the fact that the judiciary of the State had been during a few years prior, the greatest political calculators in the State, and it was not to be wondered that public excitement had raised so high as to demand for the people the privilege of exercising a power which so justly belonged to them; that they would never be anxious to break down the judiciary without just cause, but if a cause existed, as it had theretofore existed, they ought to be broken down.

Chancellor Kent called attention that by a part of the provision reported by the committee, the judges were to be liable to be removed without cause shown, by a vote of two-thirds of each House of the Legislature.

There appeared to be no doubt in his mind that the provision as reported, and then pending, did give this power. He believed that the power as reported might become a dangerous engine of faction and oppression, but he had no doubt of the power, under the language.

Mr. King, again entering the debate, alluded to his sensibility of the importance of allowing the judiciary to hold for a long term, that they might have nothing to hope, or to fear, as long as they persevered in the line of their duty, and that they ought, therefore, to be set apart for their high function, but they ought not to be lifted above responsibility; that the Constitution as it then existed was very deficient in this respect, and while it was not the intention to make the judiciary impeachable by a majority of a bare quorum of the House, the provision was intended to remove judges by joint resolution, with a view of securing their responsibility in cases where they were not liable to impeachment. It was fit that such a power should exist and he feared, if it was opposed, that other projects fatal to the judiciary as then organized would be brought forward.

Chancellor Kent followed, favoring the section as reported, that there were many causes which might render the removal of a judge expedient without affording a proper ground for impeachment, as where his faculties were impaired by casualty, sickness, infirmity, intemperance, etc. He would be glad to interpose a barrier against the effects of party spirit, but on the whole believed there could be but little danger that two-thirds of the Legislature would deprive a judge of his office without sufficient cause.

Mr. Young called attention to the fact that in the constitutions of several States, the removal of judges was authorized on recommendation of a bare majority of the Legislature, and that not an instance could be found in which that authority had been abused by improper removal. Judges would always be secure if they did not mingle in the conflicts of party, and confined themselves to the proper duty of their office.

From these extracts it is evident that whatever was done in this convention, with respect to the power of removal, was "not done in a corner." The effect of the section, if adopted, was fully recognized and considered and when it was adopted, it was adopted because it was desired and intended that there should be such control over the judiciary as the power of removal, conferred by the section upon the Legislature, would give.

This provision remained in force for a quarter of a century, and then came the convention of 1846, called to revise the Constitution.

I shall not go into the details of the debates on the subject in this convention. It was proposed to change the verbiage, but the substantial features of the provision were retained.

Charles O'Connor objected to some modification of the provision proposed, on the ground that a judge might be guilty of gross immorality, not amounting to a crime, who could not be impeached, and yet the public might be decisive against him.

Mr. Loomis said that there must be some easier and more expeditious remedy than the slow process of impeachment.

The provision remained effective until the convention of 1894. In that convention the word "complaint" was changed to "cause," so that the removal must be for cause, but there was not, so far as I can find, any general debate on the provision.

There is the authority of eminent names to the same conclusion, in the State of Massachusetts.

The Constitution of that State, adopted in 1820, contained a provision for impeachment, and a further provision that all judicial officers should hold their offices during good behavior "Provided nevertheless, the Governor with the consent of the council may remove them upon the address of both houses of the legislature."

The committee in the convention of 1820 appointed to take into consideration this clause of the Constitution, consisted of Judge Story, afterward of the Supreme Court of the United States; John Phillips, judge of the common pleas and President of the Senate; Martin, judge of the common pleas; Levi Lincoln, afterwards judge of the Supreme Court and Governor; Andrews, Holmes, Hills, Austin, Leland, afterward judge of probate for Norfolk; Kent, Shaw, afterward the great chief justice of the State; Marston, Austin, afterward Attorney-General, and Bartlett.

One section of the report of this committee read as follows:

"By the first article of the Constitution, any judge may be removed from his office by the Governor, with the advice of the council, upon the address of a bare majority of both Houses of the Legislature. The committee are of opinion that this provision has a tendency materially to impair the independence of the judges, and to destroy the efficacy of the clause which declares they shall hold their offices during good behavior. The tenure of good behavior seems to the committee indispensable to guard judges, on the one hand, from the effects of sudden resentments and temporary prejudices entertained by the people, and, on the



other hand, from the influence which imbitious and powerful men naturally exert over those who are dependent upon their good will. A provision which should at once secure to the people a power of removal in cases of palpable misconduct or incapacity, and at the same time secure to the judges a reasonable permanency in their offices, seems of the greatest utility; and such a provision will, in the opinion of the committee, be obtained by requiring that removal, instead of being upon the address of a majority, shall be upon the address of two-thirds of the members present of each House of the Legislature."

In the debate on this report these were some of the arguments of the more eminent of the members of the convention:

Levi Lincoln, who was eminent as a lawyer, and afterwards a judge and the Governor of the Commonwealth, said:

"He was entirely satisfied with the Constitution as it was. He had never heard till now, and was now surprised to hear, that there was any want of independence in the judiciary. He had heard it spoken of in charges, sermons and discourses in the streets as one of the most valuable features of the Constitution that it established an independent judiciary. He inquired, was it dependent on the Legislature? It was not on the Legislature nor on the executive. No judge could be removed but by the concurrent act of four co-ordinate branches of the government—the House of Representatives, the Senate, with a different organization from the House, the Governor, and the council. Was it to be supposed that all these should conspire together to remove a useful judge? But it was argued that future Legislatures might be corrupt. This was a monstrous supposition. He would rather suppose that a judge might be corrupt. It was more natural that a single person should be corrupt than a numerous body. The proposed amendment was said to be similar to provision of other governments. There was no analogy, because other governments are not constituted like ours. It was said that judges have estates in their offices—he did not agree to this doctrine. The office was not made for the judge, nor the judge for the office, but both for the people. There was another tenure—the confidence of the people. It was that which had hitherto occurred here. Have we, then, less reason to confide in posterity than our ancestors had to confide in us?"

Daniel Webster said:

"As the Constitution now stands, all judges are liable to be removed from office by the Governor, with the consent of the

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council, on the address of the two houses of the Legislature. It is not made necessary that the two houses should give any reasons for their address, or that the judge should have an opportunity to be heard. I look upon this as against common right, as well as repugnant to the general principles of the government. \* \* \*

"If the Legislature may remove judges at pleasure, assigning no cause for such removal, of course it is not to be expected that they would often find decisions against the constitutionality of their own acts."

"In Pennsylvania, the judges may be removed for any reasonable cause, on the address of two-thirds of the two houses. In some of the states, three-fourths of each house is required. The new Constitution of Maine has a provision with which I should be content; which is that no judge shall be liable to be removed by the Legislature till the matter of his accusation has been made known to him, and he has had an opportunity of being heard in his defense."

Mr. Childs sententiously puts it thus:

"The object in giving the power to the Legislature was that judges might be removed when it was the universal sentiment of the community that they were disqualified for the office, although they could not be convicted on impeachment."

James Trecothick Austin said:

"Nobody objects to this provision. The House of Representatives is the grand inquest; they are tried by the Senate, and have the right of being heard. But the Constitution admits that there may be cases in which judges may be removed without supposing a crime. But how is it to be done by this resolution? There are to be two trials, when for the greater charge of a high crime he has only one. It so obstructs the course of proceedings that it will never be used. He would suppose the case, not of mental disability, but the loss of public confidence. He knew that such cases were not to be anticipated. But he would look to times when the principle might be brought into operation, when the judge, by indulging strong party feelings, or from any other cause, should so far have lost the confidence of the community that his usefulness should be destroyed. He ought in such cases, to be removed, but, if witnesses were to be summoned to prove specific charges, it would be impossible to remove him. A man may do a vast deal of

mischief and yet evade the penalty of the law—a judge may act in such a manner that an intelligent community may think their rights in danger, and yet commit no offense against any written or unwritten law. Men are more likely to act in such manner as to render themselves unworthy to be trusted than so as to subject themselves to trial. The great argument for the amendment is that it is necessary to secure the independence of the judiciary. He was in favor of the principle, but it had its limitations. While we secure the independence of the judges, we should remember that they are but men, and sometimes mere partisans.”

Judge Story, of whom Wendell Phillips said that if ever anyone was, he was a little crazy on the subject of the independent of the judiciary, followed.

“The governor and council might remove them (judges) on the address of a majority of the Legislature, not for crimes and misdemeanors, for that was provided for in another manner, but for no cause whatever—no reason was to be given. A powerful individual, who has a cause in court which he is unwilling to trust to an unright judge, may, if he has influence enough to excite a momentary prejudice, and command a majority of the Legislature, obtain his removal. He does not hold the office by the tenure of good behavior, but at the will of a majority of the Legislature, and they are not bound to assign any reason for the exercise of their power. *Sic volo, sic jubeo, stat pro ratione voluntas*—Thus I wish it; thus I order. Let my will stand for a reason. This is the provision of the Constitution, and it is only guarded by the good sense of the people. He had no fear of the voice of the people when he could get their deliberate voice, but he did fear from the Legislature, if the judge has no right to be heard.

Here then is an entire consensus of eminent opinion in favor of the power of removal, and without assignment of any cause—merely because the Legislature wished it; some wanted the judges to have an opportunity to be heard; some to have a two-thirds vote, but all concurred in the wisdom of the arbitrary power of removal.

In 1821 Judge Shaw was counsel for the houses against Judge Prescott, who was removed on impeachment. On that occasion he said:

“It is true that, by another course of proceeding, warranted by a different provision of the Constitution, any officer may be removed by the executive, at the will and pleasure of a

bare majority of the Legislature—a will which the executive in most cases would have little power and inclination to resist. The Legislature without either allegation or proof, has but to pronounce the *sic volo, sic jubeo* and the officer is at once deprived of his place, and all the rank, the powers, and emoluments belonging to it. And yet, perhaps, this provision (whether wise or not I will not now stop to consider) is hardly sufficient to justify the extraordinary alarm which has been so eloquently expressed for the liberty and security of the people, or to affix upon the constitution the charge of containing features more odious and oppressive than those of Turkish despotism. The truth is that the security of our rights depends rather upon the general tenor and character, than upon particular provisions, of our Constitution. The love of freedom and of justice, so deeply engraven upon the hearts of the people, and interwoven in the whole texture of our social institutions, a thorough and intelligent acquaintance with their rights, and a firm determination to maintain them—in short, those moral and intellectual qualities without which social liberty cannot exist, and over which despotism can gain no control—these stamp the character and give security to the rights of the free people of this commonwealth. So long as such a character is maintained, no danger, perhaps, need be apprehended from the arbitrary course of preceeding, under the provision of the Constitution, to which I have alluded. But sir, we have never for a moment imagined that the proceedings on this impeachment could be influenced or affected by that provision. The two modes of proceeding are altogether distinct, and, in my humble apprehension, were designed to effect totally distinct objects. No sir! Had the house of representatives expected to attend their object by any means short of the allegation, proof and conviction of criminal misconduct, an address, and not an impeachment, would have been the court of proceeding adopted by them."

In May, 1854, Anthony Burns, alleged to be a fugitive slave, was seized in the city of Boston and was brought before Edward G. Loring, a United States Commissioner, who was also a Probate Judge in the city of Boston. The slave was remanded by the Commissioner. In the following year numerous petitions were presented to the Legislature, asking for Judge Loring's removal as a probate judge, by joint address. The address passed the Legislature, but the Governor declined to accede to it, but two years later he was removed by address.

Judge Loring filed a remonstrance that he had violated no law and had acted only in conformity with the laws of the United States. Wendell Philips, who made one of the arguments for the removal, made the point that removal by "address" does not require that the House or Senate should be convinced of any violation of law; that if the remonstrant stands legally impeccable, which is simply stating that he cannot be indicted, he still can be removed, and it is not necessary that he should render himself liable to indictment in order to be subject to be removed by address, but he can be removed for any cause which the Legislature, in its discretion, thinks a proper one."

Whatever doubts I have had on the subject have been solved by the authorities I have referred to, and I have come to the confident conclusion that the right of removal for any cause whatever, exists in the two houses of the Legislature, if two-thirds concur, and that the people have intended for over eighty years to keep precisely that check over, and to continue precisely that responsibility of, the judiciary of the state; that as all power resides in the people and is derived from them, all officers, including judges, are accountable to them.

I am aware that many are fearful that this is inconsistent with an independent judiciary. It certainly does not mean a judiciary without responsibility; it certainly does mean that a member of the judiciary must order his life while off the bench and not performing official duty, in such fashion as will not scandalize himself or the bench, or he must run the risk of removal in this manner—and it should so mean.

It has been urged that this might result in anarchy; that those believing in the principles, or lack of principles, of the anarchist, may some time secure two-thirds of each house of the Legislature, and remove all judges not of their mind.

The answer to all this is, and must be, if popular government is to prevail, and when a majority of the people get to believing in, and voting for, a government of anarchy, they are entitled to have it, and those opposed, having resisted to their utmost, must either submit, or get out.

Our history as to independence of the judiciary is not disturbing—certainly not disturbing for its lack of independence. It has never failed to respond at any juncture requiring independence of action. When causes exist that impel two-thirds of both houses of the Legislature to remove any occupant of the bench, his influence for good on the bench is gone, and if his removal is

unjust, if any frivolous reason is permitted to become cause for removal, if the cut of his coat or the color of his hair shall be assigned as cause, I agree with Tallmadge in the Convention of 1846, that it cannot much injure the party thus unjustly removed and will be certain to defeat the party abusing such power of removal.

The very difference in procedure and in result between a trial for impeachment and a removal by resolution, indicates that it was intended that removal by resolution could be had for less cause than one where impeachment could lie.

In an impeachment proceeding, the judges of the Court of Appeals, presumably the most learned and conservative members of the legal profession within the state, form a portion of the court. The members of the court, including Senators, take a special oath as judges on the court of impeachment. The judgment may extend to disqualification to hold any office in the state. It is a *court* of impeachment and all its members are for the time judges, of that court.

(Constitution, Article 6, Sec. 13.)

No such solemnity surrounds removal by resolution. There is no additional oaths, no court, no judgment of disqualification. It is a proceeding of the Legislature, as such, while impeachment is a proceeding in the most august and solemn court known to the state.

I do not mean by this to treat lightly either the procedure, or the result, under a resolution to remove a judge. But removal by resolution does not of necessity imply moral turpitude, although it may; impeachment, of necessity, does. A man may be unfit for a judge, and subject to removal by resolution, long before he becomes fit for the State's prison, and, therefore, liable to impeachment or indictment.

Reflection, greatly strengthened by observation, convinces me that when the final cataclysm comes, and our institutions fail, it will not be because, under our system, the judiciary was too much controlled, and lacked scope for independence. With the great influence that is, and always must be, exerted by any body of men that controls largely the disposition of property; upon whose judgment depends reputation; in whose hands are the issues of life and death; for which the greatest respect is taught our whole people from their earliest days, the break in the checks and balances wisely devised between the three great

departments, Executive, Legislative and Judicial, will not take place for lack of weight and influence of the judicial branch.

Very definite ideas might be expressed as to where the failure of balance will develop, but they are not germane to the discussion of the question pending; but with a tendency, I sometimes fear a growing tendency, on the part of the people, to place the eminent men who enter the judiciary in an order separate and apart, instead of recognizing that they are simply men of eminent learning and goodness, selected to do a very exalted work of the people; a tendency to make them free from any responsibility to the people, with these, I am sure that our judicial system, even with this power of removal that has existed for over eighty years without abuse, will not lack for virility, or independence.

The question of what constitutes "cause," is for the Legislature to decide, I believe without review of any kind.

This must follow as a necessary corollary to the proposition that removal is a Legislative act as before argued. In *Matter of Guden*, 171 N. Y. 529, 536, the Court of Appeals holds that the power of removal, and the responsibility for a right decision, in the matter of the removal of a sheriff, rested solely with a Governor.

I think it must be so here. For the reasons, of which the foregoing are but an outline, the committee should report the resolution, if it deems it proper in form.

#### STATE OF NEW YORK. IN SENATE.

In the Matter of the charges

*against*

WARREN B. HOOKER, a Justice  
of the Supreme Court.

Opinion.

BRACKETT, S.

Mr. Brackett, from the committee on the judiciary, to which was referred the concurrent resolution from the Assembly, relating to the time at which Judge Warren B. Hooker shall be given an opportunity to be heard before the Senate and Assem-

bly, reported in favor of the passage of the same with the following amendment:

Strike out the words "27th days of June, 1905, at 12 o'clock noon" and insert the words "11th day of July, 1905, at 10 o'clock."

The President put the question whether the Senate would agree to the adoption of said resolution as amended, and it was decided in the affirmative, as follows:

Those who voted in the affirmative were:

Allds	Cooper	Fitzgerald	Keenan	Page
Armstrong	Cordts	Foley	Lewis	Prime
Brackett	Cullen	Gardner	L'Hommedieu	Raines
Brown	Davis	Cobb	Malby	Saxe
Burr	Dooling	Coggeshall	Marks	Stevens
Carpenter	Drescher	Grady	Martin	Warnick
Cassidy	Fancher	Hasenflug	McCarren	White
Cobb	Fechter	Hawkins	McEwan	Wilcox

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Ordered, That said resolution be returned to the Assembly.

The Assembly returned the said resolution with a message that they have nonconcurred in the amendment of the Senate thereto, and had amended the same to read as follows: "Monday, July 10, at 1 o'clock p. m."

Mr. Raines moved that the Senate waive the irregularity in procedure in the above message and concur in the resolution as amended by the Assembly.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Ordered, That the Clerk return said resolution to the Assembly, with a message that they have concurred in the amendment of the Assembly thereto.

Mr. Davis offered the following:

Resolved (if the Assembly concur), That 5,000 copies of the report of the Senate committee on the judiciary and the opinion of its chairman, upon which such report is based, be printed for the use of the Senate and Assembly.

Ordered, That said resolution be referred to the committee on finance.

Mr. Malby moved to discharge the committee on finance from further consideration of said resolution.



The President put the question whether the Senate would agree to said resolution, and it was determined in the affirmative, as follows:

Those who voted in the affirmative were:

Allds	Cooper	Fitzgerald	Keenan	Page	
Armstrong	Cordts	Foley	Lewis	Prime	
Brackett	Cullen	Gardner	L'Hommedieu	Raines	
Brown	Davis	Gates	Malby	Saxe	
Burr	Dooling	Goodsell	Marks	Stevens	
Carpenter	Drescher	Grady	Martin	Warnick	
Cassidy	Fancher	Hasenflug	McCarren	White	
Cobb	Fechter	Hawkins	McEwan	Wilcox	40

Ordered, That the Clerk deliver said resolution to the Assembly with a message that they have concurred in the passage of the same.

#### STATE OF NEW YORK,

##### EXECUTIVE CHAMBER.

ALBANY, *June 28, 1905.*

*To the Senate:*

I hereby nominate as a manager of the Middletown State Homeopathic Hospital William H. Rogers, of the city of **Middletown**, to succeed Daniel Finn, deceased.

FRANK W. HIGGINS.

Confirmed.

#### STATE OF NEW YORK,

##### EXECUTIVE CHAMBER.

ALBANY, *June 28, 1905.*

*To the Senate:*

I hereby nominate as a manager of the Kings Park State Hospital Charles E. Teale, of the Borough of Brooklyn, city of New York, to succeed Julian D. Fairchild, who has declined the office.

FRANK W. HIGGINS.

Confirmed.

The Senate went into open executive session, and after some time spent therein legislative business was resumed, and the President announced that said nominations had been confirmed.

Mr. Wilcox, from the committee on railroads, to which was referred the nomination of George W. Aldridge as a Railroad Commissioner, reported the same to the Senate for confirmation.

The Senate went into open executive session, and after some time spent therein legislative business was resumed, and the President announced that said nominations had been confirmed.

The clerk announced the following appointments to serve during the extraordinary session of the Senate:

Journal clerk, Ernest A. Fay.

Index clerk, A. M. Wellman.

Assistant journal clerk, A. B. Parker.

Financial clerk, E. R. Ford.

Executive clerk, Edward F. Andrews.

Sergeant-at-arms, Charles R. Hotaling.

Assistant sergeant-at-arms, Everett Brown.

Stenographer, A. B. Sackett.

Postmaster, Clayton T. Bagg.

Principal doorkeeper, Christopher Warren.

Assistant doorkeeper, Charles G. Meyers.

Assistant doorkeeper, Howard Beecher.

Assistant doorkeeper, Wallace MacFarland.

Assistant doorkeeper, W. F. Butler.

Clerk finance committee, Robert Waterman.

Clerk judiciary committee, John B. Smith.

Stenographer finance committee, George M. Shotwell.

Postoffice messenger, Louis W. Gett.

Chief messenger, William H. Mosely. •

Page, D. H. Wayne.

Page, George Smith.

Page, Howard A. Carroll.

Page, John Sherer.

Temporary president's clerk, E. B. Dixon.

President's clerk, R. A. Inch.

President's stenographer, P. C. Schermerhorn.

President's messenger, G. W. Decker.

Janitor, Major R. Poole.

Assistant janitor, D. P. Budd.

Mr. Raines offered the following:

Resolved (if the Assembly concur), That when the Legislature adjourns to-day it be to meet on Tuesday, July 11, at 10 o'clock A. M.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Ordered, That the Clerk deliver said resolution to the Assembly.

The Assembly returned the above resolution with a message that they had concurred in the same with the following amendment:

Strike out "Tuesday, July 11, at 10 o'clock A. M." and insert "Monday, July 10, at 1 o'clock P. M."

The Assembly sent for concurrence the following:

Resolved, That a respectful message be sent to the Senate requesting the return to the Assembly of the concurrent resolution providing for adjournment to July 10th.

The President put the question whether the Senate would agree to said resolution and it was decided in the affirmative.

Ordered, That the Clerk return said resolution to the Assembly.

The Assembly then returned the resolution relative to adjournment, with a message that they have concurred in the same with the following amendment:

Strike out "Tuesday, July 11, at 10 o'clock A. M." and insert "Monday, July 10, at 12 o'clock, noon."

The President put the question whether the Senate would agree to concurrence in said resolution as amended, and it was decided in the affirmative.

Ordered, That the Clerk return said resolution to the Assembly with a message that they have concurred therein as amended.

Mr. Raines moved to adjourn.

#### MONDAY, JULY 10, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. F. J. Maguire.

The journal of Wednesday, June 28, was read and approved.

Mr. Brackett presented the following:

The committee on the judiciary report herewith the rules as formulated by the sub-committee of the judiciary committees of the two Houses, with the exception of rule six, and recommend their adoption.

Rules of practice and procedure for the Legislature while sitting in joint session for the consideration of the cause alleged for the removal of Warren B. Hooker, a justice of the Supreme Court, pursuant to the provisions of section 11 of article VI of the Constitution.

I. The Senate and Assembly shall, unless otherwise ordered by the joint session, or by concurrent resolution of both houses, meet in the Assembly chamber each day, Sundays excepted, at ten A. M., and continue in joint session until one o'clock P. M., at which hour a recess shall be taken until 2:30 o'clock P. M., when they shall again meet and continue in session until 6 o'clock P. M., when they shall adjourn for the day. But this rule may be changed by the joint session at any time and without previous notice, and the joint session may take a recess or adjourn at a different hour.

II. At all such sessions the Lieutenant Governor or President pro tem. of the Senate, or in the absence of both Lieutenant Governor and President pro tem., the Speaker of the Assembly shall preside. The clerks of the Senate and Assembly respectively, together with their respective journal clerks and other assistants who may be assigned to such duties, shall attend such joint session and keep separate records of the proceedings of such sessions, which shall be entered upon the journal of each house, and the sergeant-at-arms, doorkeepers and other employees of each house designated to attend such joint sessions shall perform such duties as may be required of them respectively.

The Lieutenant Governor and the Speaker of the Assembly shall direct all necessary preparations of the Assembly chamber, and the presiding officer of the joint session shall direct all forms of proceedings not provided for in these rules and not otherwise ordered.

III. At the time and place at which the justice sought to be removed is given an opportunity to be heard before the joint session, his name shall be called by the clerk of the Senate and after he shall have answered, he shall, together with his counsel, if any, be assigned to a place within the bar. The counsel for the Legislature, the counsel for the New York State Bar Association, for the Bar Association of the City of New York, for the Brooklyn Bar Association, and for the Jamestown Bar Association, shall each also have a place assigned to them within the bar. The statement of the cause alleged for removal, with the allegations and specifications shall then be read by the clerk of the Senate or clerk of the Assembly, as the presiding officer shall direct, and

the justice sought to be removed required to answer or otherwise plead in writing to the same. In case the justice sought to be removed does not appear nor plead, upon proof of due service of the statement of the cause alleged for removal, allegations and specifications, the Legislature may proceed thereon as it may be advised.

IV. The process of the Legislature shall be issued to compel the attendance of witnesses and the production of papers and documents and other writings upon the application of the counsel for the Legislature, or the counsel for the justice sought to be removed, which process shall be tested in the name of the Lieutenant Governor and Speaker, and signed by the clerks of the Senate and Assembly, and shall be substantially in the following form, viz.:

The People of the State of New York by the grace of God free and independent:

To.....

Greeting: You and each of you are hereby commanded and required that, laying aside all other business, you be and appear in your proper persons before our Senate and Assembly in joint session, at the Capitol in the city of Albany, on the ..... day of ..... A. D., 1905, at ..... o'clock .... M. of that day, then and there to be examined as a witness and to testify to the truth in our behalf (or in behalf of ..... ) in a certain proceeding now pending before our Senate and Assembly for the removal of Warren B. Hooker from the office of Justice of the Supreme Court, pursuant to the provisions of Section 11 of Article VI. of the Constitution of the State of New York, and if you fail to obey this subpoena you may be punished as for legislative contempt. Hereof fail not at your peril.

Witness, Hon. M. Linn Bruce, Lieutenant Governor, and Hon. S. Frederick Nixon, Speaker of the Assembly, this ..... day of ....., 1905.

Attest:

..... Clerk of the Senate.

..... Clerk of the Assembly.

If it is desired to have the witness produce papers, letters or documents, insert appropriate Duces Tecum clause. Such subpoena may be served by the Sergeant-at-Arms of either House, or some one designated by them or either of them, and return of such service made in the manner usual in courts of record in this State.

Any person attending as a witness, pursuant to such subpoena, shall receive the same fees as are allowed witnesses in civil actions in courts of record. Such fees need not be prepaid, but the Comptroller, upon the certificate of the presiding officer, and proof by affidavit or otherwise that the same is due, shall draw his warrant for the payment of the amount thereof.

V. Each witness as he is called shall be sworn or affirmed by the Clerk of the Senate or the Clerk of the Assembly in substantially the following form :

You do solemnly swear (or affirm, as the case may be) that the evidence that you shall give in this proceeding for the removal of Warren B. Hooker from the office of Justice of the Supreme Court shall be the truth, the whole truth and nothing but the truth, so help you God, (or this you affirm).

VI. All the rules, legal and usual in courts of record of this State, so far as practicable, in regard to the introduction of evidence and the examination of witnesses, shall be observed.

VII. All motions made by the members of the joint session, or by counsel, shall be addressed to the presiding officer, and, if he shall so require, shall be reduced to writing and read from the clerk's desk, and the decision thereon and of all points and objections raised by counsel shall be had after hearing the arguments of counsel, if an opportunity for argument is requested, and shall be decided by the presiding officer, whose decision shall be final unless at least twenty members of the joint session shall except to the same when the question shall be determined by a vote of the joint session, which upon the demand of at least thirty members shall be taken by ayes and noes; and all motions, points or objections shall be entered upon the journal, together with the decision thereon. Decision upon all motions, points and objections shall be made without debate unless twenty or more members of the joint session shall ask that debate be had thereon. When a motion that debate be had shall be adopted, discussion shall be had, in which debate on motions and objections shall be limited to five minutes to each speaker. When the vote upon such questions is taken upon a roll call, the decision of the presiding officer shall stand unless the Senate and Assembly, by a majority vote of those present, upon a separate roll call of the Senate and Assembly, refuse to sustain such decision.

VIII. In the argument of motions, points and objections to evidence, only one counsel shall be heard upon either side of the

controversy, and counsel shall stand while examining or cross-examining a witness or offering evidence. In the discussion of questions and objections, the party having the affirmative may be heard by one counsel; the opposite party may then be heard by one counsel; and the party having the affirmative may in like manner be heard in reply; and not exceeding ten minutes shall be occupied by each unless by permission of the joint session.

IX. The stenographer of the Senate and Assembly, with such assistants as shall be necessary, shall take the proceedings, including oral testimony and evidence, and the clerks of the Senate and Assembly shall procure the same to be printed for the use of the members of the joint session and counsel, at the opening of the session on the next day after the same shall have been given.

X. A majority of the members elected to each House shall constitute a quorum in joint session, and upon all questions arising in such session a majority vote of the members of the session present shall be decisive except as herein otherwise provided.

XI. A call may be ordered at any time during the joint session by either Senate or Assembly of its members; but if a quorum of the body ordering the call is present, the proceeding of the joint session need not be suspended pending the call.

XII. At the conclusion of the evidence the joint session, by resolution, shall fix the time and place for the final arguments of counsel, and shall determine the number of counsel to be heard, the length of time they shall be heard and the order in which they shall be heard, except that counsel for the Legislature shall have the closing argument.

XIII. After hearing the Justice sought to be removed, in case he shall request to be heard, and the final arguments of counsel, the joint session shall dissolve. The House in which the proceeding originated shall thereupon go into secret session and after such debate as may be had thereon shall proceed to vote. Upon such vote the question shall be by ayes and nays upon a resolution in substantially the form following:

Resolved (if the Senate concur), That Warren B. Hooker and he is hereby removed from the office of Justice of the Supreme Court for cause (stating it). The cause of the ayes and nays shall be entered on the journal. If two-thirds of all the members elected to the Assembly so voting shall vote in the affirmative the resolution, duly certified, shall be transmitted to the Senate, and the vote shall thereupon there be similarly taken. If two-

thirds of all the members of the Senate vote in the affirmative, the said Warren B. Hooker is removed from the office of Justice of the Supreme Court.

XIV. These rules shall be in force upon their adoption by a concurrent resolution of the Senate and Assembly, and they may be altered or amended from time to time as circumstances or necessity may require by a majority vote of both Houses separately taken in joint session or by concurrent resolution of the Senate and Assembly.

Ordered laid aside until the afternoon.

Leave of absence was granted to Senators Marks, Lewis, Armstrong and Cordts.

The President presented to the Senate the affidavit of Frank W. Johnson, showing service upon Warren B. Hooker of a copy of the resolutions, causes alleged for removal and notice to appear before a joint assembly of the Senate and Assembly on July 10, 1905, at 1 o'clock P. M.

Mr. Grady announced the death of ex-Senator James F. Pierce, and moved that when the Senate adjourn to-day it be in honor of his memory.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Brackett offered the following:

Resolved (if the Assembly concur), That the Senate and Assembly meet in joint assembly at 1 o'clock P. M. to-day for the purpose of hearing the return of Warren B. Hooker to the charges presented and served upon him relative to his removal as a justice of the Supreme Court.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Ordered, That the Clerk return said resolution to the Assembly with a message that they have concurred in the same.

The Assembly returned the above resolution with a message that they have concurred in the same.

Mr. Brackett moved that a committee of two be appointed to wait upon the Assembly and inform that body that the Senate is ready to meet in joint session.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.



The President appointed as such committee Messrs. Brackett and Grady.

The above named committee returned and reported that they had performed that duty, and that the Speaker had requested them to notify the Senate that the Assembly is ready to receive the Senate in joint assembly.

Whereupon, The President left the chair, and with the Senate proceeded to the Assembly chamber.

#### JOINT SESSION—ASSEMBLY CHAMBER.

The President of the Senate presiding.

The Clerk of the Senate called the roll of Senators, and the following responded as present:

Allds	Cooper	Grady	Martin	Saxe
Ambler	Elisberg	Hasenflug	McEwan	Stevens
Brackett	Fancher	Hawkins	Page	Tully
Brown	Fechter	Hinman	Raines	Warnick
Carpenter	Gardner	L'Hommedieu	Riordan	White
Cassidy	Goodsell	Malby		

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The Clerk of the Assembly called the roll of the Assembly, and the following responded as present:

Apgar	Fuller	Miller	Schoeneck	Tompkins
Bedell	Gardner	Monroe	Scovill	Waddell
Beihilf	Hammond	Moreland	Shanahan	Wade
Brooks	Hanford	Murphy	Sheldon	Wadsworth
Burnett	Hartman	O'Neill	Shuttleworth	Wainwright
Cadin	Hastings	Palmer	Slocum	West
Callahan	Hooker	Patton	Smith, A. P.	Wemple
Carrier	Hooper	Pendry	Smith, J. E.	Whitney F G
Charles E E	Hurd	Perry	Smith, J. T.	Whitney G H
Coon	Knapp	Phillips	Standart	Wilson
Cotton	La Rue	Platt	Stanley	Wolf
Cowan	Leggett	Prentice	Steele	Wood F C
Dodd	Maier	Quinn	Stevens	Wood F X
Etzel	Matthews C R	Reilly	Tenjust	Yale
Evans	McKeown	Rogers	Thompson G F	Young
Foelker	Mead	Santee	Thonet	Speaker
Foster	Merritt			

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The President stated that a quorum of both Houses being present, the joint session is duly convened.

The President announced that proof of service upon Justice Warren B. Hooker of the resolutions and notice to appear had been received by the Clerk of each House.

By direction of the President, the Clerk of the Senate called the name of Warren B. Hooker and receiving no response was instructed to enter upon the journal the default of Justice Warren B. Hooker.

The Clerks of the Senate and Assembly were instructed to communicate with Justice Hooker or his counsel to ascertain whether or not the default was intentional.

Justice Hooker appeared in the Assembly chamber and responded to his name when again called by the Clerk, and stated that he was represented by counsel who were named by Mr. John B. Stanchfield as follows: Lewis E. Carr, William W. Goodrich, W. B. Hoyt, W. E. Kisselberg and John B. Stanchfield.

The reading of the charges against Judge Warren B. Hooker were waived by the respondent and Mr. Stanchfield, of counsel, presented an answer which was read in the words following:

#### IN THE LEGISLATURE OF THE STATE OF NEW YORK.

<p>In the Matter of the Proceedings for the removal of War- ren B. Hooker from the office of Justice of the Supreme Court pur- suant to the provisions of section 11 of Article 6 of the Constitution.</p>
--

The answer of Warren B. Hooker, above named, to the charges preferred in the above entitled matter and which have been heretofore served upon him, not waiving any right pertaining to him to object by motion or otherwise as he may be advised by counsel to any or all of the proceedings upon which said charges are based, or to the regularity of any or all proceedings in reference thereto, previous or subsequent to the service of the same upon him, or to the said charges, or either of them as to their manner, form or sufficiency in law, respectfully shows to this Honorable Legislature:

First. This respondent avers that he is a justice of the Supreme Court of the State of New York and in person comes before the Honorable Legislature and denies that there is any crime, misdemeanor or offense generally or particularly alleged in the aforesaid charges to which he is or can be bound by law to make answer. The respondent reserves to himself both now and at all

times hereafter the right to take such exception as he may be advised as to the sufficiency of the said charges and each of them, and likewise to the defects therein appearing as matter of law, and protesting that he ought not to be in any way or manner prejudiced by the form of this his answer, he denies each and every allegation in the said charges contained and the inferences, designs and intentions charged to flow therefrom, and avers that each and every of the acts that he did in the premises was done in the faithful, honest and conscientious discharge of his duty both as a citizen and a public officer and, therefore, for and as a plea to said charges says that he is not guilty.

Second. And for a further and separate answer to the said charges and each and every of them, this respondent avers and insists that the several matters therein alleged do not, nor does ~~any~~ of them, constitute an offense for which this respondent is liable to removal under section 11 of article 6 of the Constitution of the State of New York, or for which your honorable body under the Constitution is empowered to remove him from the office of a justice of the Supreme Court of the State of New York.

Third. And for a further and separate answer to the said charges and each and every of them, this respondent denies that your honorable body has jurisdiction to proceed ~~or~~ the removal of the respondent upon the facts set forth in the statement of causes for removal herein.

Dated Albany, July 10, 1905.

WARREN B. HOOKER.

Mr. Raines moved that the joint session stand in recess until Tuesday morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The Senate having returned to the Senate chamber, Mr. Raines moved that the Senate stand in recess until 4 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

#### FOUR O'CLOCK P. M.

The Senate again met.

The Assembly sent for concurrence a resolution in the words following:

Concurrent resolution providing for the adoption of rules of practice and procedure by the Legislature in the proceeding for

the removal of Warren B. Hooker from the office of Justice of the Supreme Court pursuant to the provisions of Section 11 of Article VI of the Constitution.

Resolved (if the Senate concur). That the rules of practice and procedure formulated by the committee on judiciary of the Senate and of the Assembly, and the leaders of the majority and of the minority of the Assembly, and reported to the Legislature July 10, 1905, and a copy of which rules are hereto annexed and made a part of this resolution, be and the same are hereby adopted.

The said rules being as follows:

**Rules of Practice and Procedure for the Legislature while Sitting in Joint Session for the Consideration of the Cause Alleged for the Removal of Warren B. Hooker, a Justice of the Supreme Court, Pursuant to the Provisions of Section 11 of Article 6 of the Constitution.**

I. The Senate and Assembly shall, unless otherwise ordered by the joint session, or by concurrent resolution of both Houses, meet in the Assembly chamber each day, Sundays excepted, at 10:00 a. m., and continue in joint session until 1:00 o'clock p. m., at which hour a recess shall be taken until 2:30 o'clock p. m., when they shall again meet and continue in session until 6:00 o'clock p. m., when they shall adjourn for the day. But this rule may be changed by the joint session at any time and without previous notice, and the joint session may take a recess or adjourn at a different hour.

II. At all such sessions the Lieutenant-Governor or President pro tem of the Senate, or in the absence of both Lieutenant-Governor and President pro tem, the Speaker of the Assembly shall preside. "The presiding officer of the joint Assembly shall be designated and addressed as 'Mr. President.'" The Clerks of the Senate and Assembly respectively, together with their respective journal Clerks and other assistants who may be assigned to such duties, shall attend such joint session and keep separate records of the proceedings of such sessions, which shall be entered upon the journal of each House, and the Sergeant-at-Arms, doorkeepers and other employees of each House designated to attend such joint sessions shall perform such duties as may be required of them respectively.

The Lieutenant-Governor and the Speaker of the Assembly shall direct all necessary preparations of the Assembly chamber

and the presiding officer of the joint session shall direct all forms of proceedings not provided for in these rules and not otherwise ordered.

III. At the time and place at which the Justice sought to be removed is given an opportunity to be heard before the joint session, his name shall be called by the Clerk of the Senate and after he shall have answered, he shall, together with his counsel, if any, be assigned to a place within the bar. The counsel for the Legislature, the counsel for the New York State Bar Association, for the Bar Association of the City of New York, for the Brooklyn Bar Association and for the Jamestown Bar Association shall each also have a place assigned to them within the bar. The statement of the cause alleged for removal, with the allegations and specifications, shall then be read by the Clerk of the Senate or Clerk of the Assembly, as the presiding officer shall direct and the Justice sought to be removed required to answer or otherwise plead in writing to the same. In case the Justice sought to be removed does not appear nor plead, upon proof of due service of the statement of the cause alleged for removal, allegations and specifications, the Legislature may proceed thereon as it may be advised.

IV. The process of the Legislature shall be issued to compel the attendance of witnesses and the production of papers and documents and other writings upon the application of the counsel for the Legislature, or the counsel for the Justice sought to be removed, which process shall be tested in the name of the Lieutenant-Governor and Speaker, and signed by the Clerks of the Senate and Assembly, and shall be substantially in the following form, viz:

The People of the State of New York by the grace of God free and independent:

To.....

Greeting: You and each of you are hereby commanded and required that, laying aside all other business, you be and appear in your proper persons before our Senate and Assembly in joint session, at the Capitol in the City of Albany on the.....day of.....A. D., 1905, at.....o'clock..M., of that day, then and there to be examined as a witness and to testify to the truth in our behalf (or in behalf of.....) in a certain proceeding now pending before our Senate and Assembly for the removal of Warren B. Hooker from the office of Justice of the Supreme Court, pursuant to the provisions of Section 11 of Article

VI., of the Constitution of the State of New York, and if you fail to obey this subpoena you may be punished as for Legislative contempt. Hereof fail not at your peril.

Witness, Hon. M. Linn Bruce, Lieutenant Governor, and Hon. S. Frederick Nixon, Speaker of the Assembly, this.....day of.....1905.

Attest:

.....Clerk of the Senate.

.....Clerk of the Assembly.

If it is desired to have the witness produce papers, letters or documents, insert appropriate Duces Tecum clause. Such subpoena may be served by the Sergeant-at-arms of either House, or some one designated by them or either of them, and return of such service made in the manner usual in courts of record in this State. Any person attending as a witness, pursuant to such subpoena, shall receive the same fees as are allowed witnesses in civil actions in courts of record. Such fees need not be prepaid, but the Comptroller, upon the certificate of the presiding officer, and proof by affidavit or otherwise that the same is due, shall draw his warrant for the payment of the amount thereof.

V. Each witness as he is called shall be sworn or affirmed by the clerk of the Senate or the clerk of the Assembly in substantially the following form:

You do solemnly swear (or affirm, as the case may be) that the evidence that you shall give in this proceeding for the removal of Warren B. Hooker from the office of Justice of the Supreme Court shall be the truth, the whole truth and nothing but the truth so help you God, (or this you affirm).

Va. All the rules legal and usual in courts of record of this State in regard to the introduction of evidence and the examination of witnesses shall be observed.

VI. All motions made by the members of the joint session, or by counsel, shall be addressed to the presiding officer, and, if he shall so require shall be reduced to writing and read from the clerk's desk, and the decision thereon and of all points and objections raised by counsel, shall be had after hearing the arguments of counsel, if an opportunity for argument is requested, and shall be decided by the presiding officer whose decision shall be final unless at least twenty members of the joint session shall except to the same when the question shall be determined by a vote of the joint session, which upon the demand of at least thirty members shall be taken by ayes and noes; and all motions, points and objections shall be entered upon the journal together

with the decision thereon. Decision upon all motions, points and objections shall be made without debate unless twenty or more members of the joint session shall ask that debate be had thereon. When a motion that debate be had shall be adopted, discussion shall be had, in which debate on motions and objections shall be limited to five minutes to each speaker. When the vote upon such questions is taken upon the roll call, the decision of the presiding officer shall stand unless the Senate and Assembly, by a majority vote of those present upon a separate roll call of the Senate and Assembly refuse to sustain such decision.

VII. In the argument of motions, points and objections to evidence, only one counsel shall be heard upon either side of the controversy, and counsel shall stand while examining or cross-examining a witness or offering evidence. In the discussion of questions and objections, the party having the affirmative may be heard by one counsel; the opposite party may then be heard by one counsel; and the party having the affirmative may in like manner be heard in reply; and not exceeding ten minutes shall be occupied by each unless by permission of the joint session.

VIII. The official stenographers of the Senate and Assembly, with such assistance as shall be necessary, shall take the proceedings, including oral testimony and evidence, and the clerks of the Senate and Assembly shall procure the same to be printed for the use of the members of the joint session and counsel at the opening of the session on the next day after the same shall have been given.

IX. A majority of the members elected to each House shall constitute a quorum in joint session, and upon all questions arising in such session a majority vote of the members of the session present shall be decisive except as herein otherwise provided.

X. A call may be ordered at any time during the joint session by either the Senate or Assembly of its members; but if a quorum of the body ordering the call is present, the proceedings of the joint session need not be suspended pending the call.

XI. At the conclusion of the evidence the joint session, by resolution, shall fix the time and place for the final arguments of counsel, and shall determine the number of counsel to be heard, the length of time they shall be heard and the order in which they shall be heard, except that counsel for the Legislature shall have the closing argument.

XII. After hearing the justice sought to be removed, in case he shall request to be heard, and the final arguments of counsel, the joint session shall dissolve. The House in which the pro-

ceeding originated shall thereupon go into session and after such debate as may be had thereon shall proceed to vote. Upon such vote the question shall be by ayes and nays upon a resolution in substantially the form following:

Resolved (if the Senate concur), That Warren B. Hooker be and he is hereby removed from the office of justice of the Supreme Court for cause (stating it). The cause and the ayes and nays shall be entered on the journal. If two-thirds of all the members elected to the Assembly so voting shall vote in the affirmative the resolution, duly certified, shall be transmitted to the Senate, and the vote shall thereupon there be similarly taken. If two-thirds of all the members of the Senate vote in the affirmative, the said Warren B. Hooker is removed from the office of justice of the Supreme Court.

XIII. These rules shall be in force upon their adoption by a concurrent resolution of the Senate and Assembly, and they may be altered or amended from time to time as circumstances or necessity may require by a majority vote of both houses separately taken in joint session or by concurrent resolution of the Senate and Assembly.

The amendments adopted in the Assembly to said rules being as follows:

Rule 2. After the word "preside," in line 4, insert the following: "The presiding officer of the joint assembly shall be designated and addressed as 'Mr. President.'".

Rule 5. After Rule 5 insert the following section, to be known as 5a: "All the rules, legal and usual in courts of record of this State, in regard to the introduction of evidence and the examination of witnesses shall be observed. •

Rule 12. Strike out the word "secret."

Mr. Raines moved to concur in said resolution and rules with the exception of the amendment designated as rule "5-a."

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Raines moved to concur in rule 5-a with a further amendment as follows:

Add at the end thereof the following: "As the same shall be interpreted by the President and the joint session in accordance with the procedure under rule 6."



Mr. Grady moved to amend that this rule be referred to the committee on the judiciary, with instructions to report at 9:30 A. M., to-morrow.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Those who voted in the affirmative were:

Grady	Hinman	Page	Riordan	Saxe	7
Hasenflug	Martin				

Those who voted in the negative were:

Allds	Carpenter	Drescher	Goodsell	Raines	
Ambler	Cassidy	Elsberg	L'Hommedieu	Stevens	
Brackett	Coggeshall	Fancher	Malby	Tully	
Brown	Cooper	Fechter	McEwan	Warnick	
Burr	Cordts	Gardner	Prime	White	25

Mr. Grady moved that a respectful message be sent to the Assembly stating that it is the sense of the Senate that no rule whatever on the subject is preferable to rule 5-a as adopted by the Assembly.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Those who voted in the affirmative were:

Elsberg	Hawkins	Martin	Riordan	Stevens	
Grady	Hinman	Page	Saxe	Tully	13
Hasenflug	Malby	Prime			

Those who voted in the negative were:

Allds	Burr	Cooper	Gardner	Raines	
Ambler	Carpenter	Drescher	Goodsell	Warnick	
Brackett	Cassidy	Fancher	L'Hommedieu	White	19
Brown	Coggeshall	Fechter	McEwan		

The President put the question whether the Senate would agree to the amendment offered by Mr. Raines, and it was decided in the affirmative.

Those who voted in the affirmative were:

Allds	Carpenter	Drescher	Gardner	Raines	
Ambler	Cassidy	Elsberg	Goodsell	Warnick	
Brown	Cooper	Fancher	L'Hommedieu	White	19
Burr	Cordts	Fechter	McEwan		

Those who voted in the negative were:

Coggeshall	Hawkins	Martin	Riordan	Stevens	
Grady	Hinman	Page	Saxe	Tully	12
Hasenflug	Malby				

Mr. Grady moved to reconsider the vote by which said amendment was carried, and that this motion be laid upon the table until the opening of the Senate to-morrow.

The President put the question whether the Senate would agree to lay said motion upon the table, and it was decided in the negative by the following vote:

Those who voted in the affirmative were:

Grady	Hawkins	Martin	Riordan	Saxe	
Hasenflug	Hinman	Page			8

Those who voted in the negative were:

Allds	Cassidy	Elsberg	L'Hommedieu	Stevens	
Ambler	Coggeshall	Fancher	Malby	Tully	
Brown	Cooper	Fechter	McEwan	Warnick	
Burr	Cordts	Gardner	Raines	White	
Carpenter	Drescher	Goodsell			23

The President put the question whether the Senate would agree to the motion to reconsider said amendment, and it was decided in the negative by the following vote:

Those who voted in the affirmative were:

Grady	Hawkins	Martin	Riordan	Saxe	
Hasenflug	Hinman	Page			8

Those who voted in the negative were:

Allds	Cassidy	Elsberg	L'Hommedieu	Stevens	
Ambler	Coggeshall	Fancher	Malby	Tully	
Brown	Cooper	Fechter	McEwan	Warnick	
Burr	Cordts	Gardner	Raines	White	
Carpenter	Drescher	Goodsell			23

Ordered, That said resolution be returned to the Assembly, with a message that the Senate have concurred in the same with amendments.

Mr. Raines moved that the Senate adjourn until 9.45 A. M. to-morrow.

Whereupon, in respect to the memory of Hon. James F. Pierce, the Senate adjourned.

TUESDAY, JULY 11, 1905.

The Senate met pursuant to adjournment.

No clergyman present.

The journal of yesterday was read and approved.

The Clerk called the roll and the following Senators responded as present:

Allds	Cooper <sup>1</sup>	Gardner	L'Hommedieu	Raines
Ambler	Cordts	Gates	Malby	Riordan
Armstrong	Davis	Goodsell	Martin	Saxe
Brown	Drescher	Grady	McCarren	Stevens
Burr	Elberg	Hawkins	McEwan	Tully
Carpenter	Fancher	Hinman	Page	Warnick
Cassidy	Fechter	Kehoe	Prime	White
Coggeshall				

Leave of absence was granted to Mr. Elsberg from 11 o'clock a. m. until 2.30 o'clock p. m. to-day.

The Assembly returned the resolution relative to the adoption of rules of procedure, with a message that they have concurred in the amendment of the Senate to Rule 5a.

Mr. Raines asked that the following words be stricken from the journal of yesterday:

"The amendments adopted in the Assembly to said rules being as follows:

"Rule 2. After the word 'preside,' in line 4, insert the following: 'The presiding officer of the joint assembly shall be designated and addressed as "Mr. President."'"

"Rule 5. After Rule 6 insert the following section, to be known as 5a: 'All the rules, legal and usual in courts of record of this State, in regard to the introduction of evidence and the examination of witnesses shall be observed.'

"Rule 12. Strike out the word 'secret.'"

It was thereupon so ordered.

Mr. Grady offered the following:

Resolved (if the Assembly concur), That Rule 5a of the rules of practice and procedure for the Legislature while sitting in joint session for the consideration of the cause alleged for re-

removal of Warren B. Hooker, a justice of the Supreme Court, pursuant to the provisions of section 11 of article 6 of the Constitution, as heretofore adopted by the Senate and Assembly, be amended so as to read as follows:

"5a. All the rules legal and usual in courts of record in this State, so far as practicable, in regard to the introduction of evidence and the examination of witnesses shall be observed."

Ordered, That said resolution be laid aside for one day, under the rules.

The hour of 10 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber.

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#### JOINT SESSION—ASSEMBLY CHAMBER.

Lieutenant-Governor in the Chair.

MR. PRESIDENT: The Chair would inquire of the chairman of the judiciary committee of the Senate whether or not the Legislature is represented by counsel.

MR. BRACKETT: Mr. Coman, as I understand, is the adviser of the Legislature.

MR. PRESIDENT: The Clerk will note upon the journal the appearance of Henry B. Coman on behalf of the Legislature.

MR. PRESIDENT: Is the association of the bar of the State of New York represented by counsel? ●

MR. COMAN: The State Bar Association appears by Mr. George A. Lawyer.

MR. PRESIDENT: The Clerk will note the appearance of Mr. George A. Lawyer on behalf of the State Bar Association.

MR. COMAN: I desire to say that Mr. Goodell is necessarily detained by his official duties, but is expected to be present at this hearing the day after to-morrow on behalf of the State Bar Association.

MR. PRESIDENT: Is the association of the bar of the city of New York represented by counsel?

MR. MACFARLANE: The association of the bar of the city of New York is represented by me, Mr. Wallace MacFarlane.

MR. PRESIDENT: The Clerk will note the appearance of Mr. Wallace MacFarlane on behalf of the association of the bar of the city of New York.

MR. PRESIDENT: Is the association of the bar of the city of Brooklyn represented by counsel?

MR. HURD: I represent the Bar Association of the City of Brooklyn, Mr. William B. Hurd, Jr.

MR. PRESIDENT: The Clerk will enter the appearance of William B. Hurd, Jr., in behalf of the Bar Association of the City of Brooklyn.

MR. PRESIDENT: Is the association of the bar of the city of Jamestown represented by counsel?

MR. STEVENS: It is represented by Frank W. Stevens.

MR. PRESIDENT: The Clerk will enter upon the record the appearance of Mr. Frank W. Stevens on behalf of the Bar Association of the City of Jamestown.

MR. PRESIDENT: The Chair would like to ask the Clerk: whether the copies of the rules of procedure have been furnished to the attorneys for the respondent and the attorneys for the various bar associations? As soon as they are copied the rules of procedure will be furnished to the various attorneys.

MR. RAINES: Mr. President, with respect to the statement just made by the President, I desire to say for the information of counsel, they will find the rules of procedure as adopted in the journal of the Senate commencing at page 59 to the bottom of page 63. Rule 5-a, the only rule not adopted heretofore, having been adopted this morning as amended.

THE PRESIDENT: The Clerk of the Senate will read the journal of the proceedings of the joint session of yesterday.

(The Clerk read the journal as directed.)

THE PRESIDENT: If there are no corrections the journal of the joint assembly will stand approved as read.

THE PRESIDENT: We are ready, Mr. Coman, to proceed.

MR. STANCHFIELD: Mr. President, before we proceed further—(Hands up paper to the desk.)

THE PRESIDENT: The attorney for the respondent offers the following challenge which the Clerk of the Senate will read.

The Clerk read the challenge as follows:

IN THE LEGISLATURE OF THE STATE OF NEW YORK.

In the Matter of the Proceedings for the  
Removal of WARREN B. HOOKER from the  
Office of Justice of the Supreme Court of  
New York State, Pursuant to the Provi-  
sions of Section 11 of Article VI of the  
Constitution of New York State.

Warren B. Hooker hereby challenges the right of Robert J. Fish, Charles W. Mead, William W. Wemple, Sherman Moreland, Abram B. Steele, William D. Cunningham, Edward Schoeneck, Fred. A. Whitney, Frank W. Standart, W. Seward Shannahan, Peter J. Everett, and Emanuel S. Cahn, and of each of them, to take any part in the above-entitled proceeding, on the ground that they, as members of the judiciary committee of the Assembly, have heard the accusations and evidence taken in this matter, have determined upon and reported findings of fact and conclusions of law relative thereto, and have recommended to the Legislature of New York State to institute the above-entitled proceeding, and so each of said members of said judiciary committee has thus disqualified himself both in law and equity from in any

way taking any part in this proceeding to remove said Warren B. Hooker from the office of justice of the Supreme Court.

Dated, ALBANY, *July* 10, 1905.

WARREN B. HOOKER.  
JOHN B. STANCHFIELD.  
LEWIS E. CARR.  
WM. H. GOODRICH.  
W. E. KISSELBURGH, Jr. .

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STATE OF NEW YORK.

*To the Assembly:*

Your committee on the judiciary, which was, by resolution adopted February 1, 1905, directed to investigate the truth of certain accusations against Hon. Warren B. Hooker, a justice of the Supreme Court, and all matters relating thereto or connected therewith, and all other matters relating to or affecting the fitness of said Warren B. Hooker to hold the office of justice of the Supreme Court; and to report to the Assembly with all convenient speed the proceedings had and testimony taken by said committee, together with its opinion thereon, and such recommendations as the committee might make in the matter, respectfully report:

That, as soon as practicable, your committee entered upon the discharge of its duties under said resolution and have ever since been almost continually engaged in such investigation. That soon after the adoption of said resolution the committee retained Mr. Henry B. Coman, of Morrisville, N. Y., as its counsel, and Henry C. Lammert as its stenographer, and adopted a resolution inviting the New York State Bar Association, the Bar Association of the City of New York, the Brooklyn Bar Association and the Jamestown Bar Association to co-operate with the committee and its counsel in the matter of procuring witnesses and evidence material and relevant to such investigation.

Soon after the adoption of said resolution it was found by the committee and its counsel that a large amount of documentary evidence, material and relevant to the inquiry, was on file in the Postoffice Department at Washington, D. C., and an effort was at once made to procure certified copies of the same. The Postmaster-General, however, declined to make or furnish to the committee such certified copies, but informed the committee that an inspection of such documents by a committee of the Assembly would be permitted, and that such committee would be permitted to take copies of the same. Accordingly, pursuant to a resolution of the committee, a subcommittee, consisting of the chairman, Mr. Mead and Mr. Shannahan, was appointed for the purpose of visiting Washington and procuring such evidence.

Said subcommittee, attended by the counsel for the committee and by counsel for said Warren B. Hooker, visited the city of Washington on the 24th to the 29th days of February, 1905, and verified and obtained copies of a large number of letters and other documents, which have been used as exhibits in the investigation.

On the 5th day of February, 1905, the said Warren B. Hooker was seriously injured in a railroad accident while on his way to New York to consult with his counsel; and the hearing before the committee was postponed from time to time until March 16, 1905, so that the said Warren B. Hooker might be able to attend in person the hearings before the committee.

On the 20th day of March, 1905, Hon. Frederick E. Perham, a member of this committee, died. Hon. Peter J. Everett, a member of this committee, has been unable, by reason of sickness, to attend any of the hearings in this matter.

The taking of testimony was commenced on the 21st day of March, 1905, and continued, with brief intermission, until and including April 12, 1905. During all of said hearing we have been attended by the counsel for the committee, by counsel for each of the bar associations above mentioned, and by said Warren B. Hooker in person and by his counsel. The arguments of counsel were commenced on the 13th day of April, 1905, and concluded on the 21st day of April, 1905.



All the proceedings and evidence had and taken before the committee, together with the arguments of counsel, are herewith returned and form a part of this report.

We have investigated the truth of the accusations referred to in said resolution and have taken testimony relating to other matters affecting the fitness of said Warren B. Hooker to occupy the position of justice of the Supreme Court; have heard all the evidence produced and offered by our counsel, by counsel for the said bar associations, and by counsel for said Warren B. Hooker; and, after mature deliberation thereon, we find and report the following facts and conclusions, with our recommendation thereon:

#### FACTS.

We find the following facts established by the evidence:

First. That Warren B. Hooker was the Representative in the Congress of the United States from the Thirty-seventh Congressional District of the State of New York for about eight years immediately prior to the 11th day of November, 1898. That on the 10th day of November, 1898, said Hooker resigned his office as such Representative in Congress, and on that day was appointed by the Governor of the State of New York a justice of the Supreme Court in and for the Eighth Judicial District, to fill the vacancy occasioned by the death of the Hon. Hamilton Ward, who had theretofore been such justice in and for said district. That said Hooker continued to hold the office of justice of the Supreme Court under such appointment to and including the 31st day of December, 1899. That at the general election held in November, 1899, said Warren B. Hooker was duly elected a justice of the Supreme Court in and for said Eighth Judicial District for the term of fourteen years from the 1st day of January, 1900, and has since continued to be and now is such justice of the Supreme Court.

That no successor to said Warren B. Hooker as Representative in Congress was elected until the general election held in the

month of November, 1899, when Edward B. Vreeland was elected to fill the vacancy caused by said Hooker's resignation and assumed the duties of the office on the first Monday of December, 1899.

That during all the times hereinbefore and hereinafter mentioned said Hooker was and now is a resident of Fredonia, in the county of Chautauqua, N. Y., and up to the time of his appointment as such justice of the Supreme Court occupied a law office in the second story of the postoffice building in the village of Fredonia, N. Y., which building was owned by the village of Fredonia, and that after his appointment as such justice of the Supreme Court he continued to use and occupy said office as his Supreme Court chambers.

Second. That in or about the month of September, 1896, one Frank P. Ball, who was then, ever since has been and now is a resident of the village of Fredonia, entered into a co-partnership with Etta E. Hooker, the wife of said Warren B. Hooker, and others, in the purchase and ownership of certain oil producing property in the State of West Virginia. That the amount invested in said business by Ball was the sum of \$1,666.66, which he obtained upon his promissory note for that amount, dated September 10, 1896, and which was indorsed by said Etta E. Hooker and said Warren B. Hooker and deposited in the Fredonia National Bank, and the proceeds thereof used to pay the amount which said Ball had agreed to pay for his interest in said oil property and business. That said note was renewed from time to time, in substantially the same amount, and said renewals were indorsed by said Etta E. Hooker but not by said Warren B. Hooker, until, at the maturity of the same, on September 10, 1899, there was due and unpaid thereon the sum of \$1,710. That in the meantime the said oil business had proved unprofitable and a considerable indebtedness had been incurred by said co-partnership, the said Ball's proportion thereof being about the sum of \$1,430. That the said Etta E. Hooker was liable as a co-partner for said indebtedness, in addition to her liability as endorser upon the said note.

That on or about the 10th day of September, 1898, the said Ball determined to withdraw from said business and from said co-partnership, and for the purpose of taking care of said note and of his proportion of said co-partnership indebtedness, made his promissory note for \$3,040 and interest, bearing date September 10, 1898, payable to the order of said Etta E. Hooker. That said note was endorsed by said Etta E. Hooker and was discounted at the Fredonia National Bank on the 7th day of October, 1898.

That shortly before October 11, 1898, said Warren B. Hooker requested George W. Beavers, who was then chief of the Salaries and Allowance Division of the Postoffice Department of the United States Government, to appoint said Frank P. Ball as a laborer in the postoffice in Fredonia; and that thereafter and on the 12th day of October, 1898, the said Beavers did appoint, or cause the said Ball to be appointed, as such laborer at a salary of \$600 per annum.

That prior to the last-mentioned date no person had occupied such position or been appointed to such position of laborer. That when said Ball was made clerk, as hereinafter set forth, no person was appointed laborer to succeed him, until the appointment of Maurice Hooker to such position about three years later.

That the duties of laborer in said postoffice were slight and consisted of scrubbing the floor of the inside office and washing the windows; and that such duties had theretofore been performed by a scrub woman at an expense not exceeding \$12 per year. That the appointment of Ball or any other person as such laborer was not requested by the postmaster at Fredonia and was unnecessary.

That said Ball was engaged in business as a railroad ticket broker in the city of Dunkirk, distant about three miles from Fredonia, and was engaged continually in said business from 1892 until long after his connection with the Fredonia post office ceased, excepting the period from September 1, 1897, to December 7, 1898.

That on the 9th day of January, 1899, said Warren B. Hooker was in the city of Washington, and after a conversation had between said Beavers and said Warren B. Hooker, and after a correspondence between them, all of which took place in the month of January, 1899, said Ball's position in the Fredonia post office was changed to clerk, on the 15th day of January, 1899. No such clerkship had theretofore existed and upon the resignation of said Ball no one was appointed in his place, and such change was not requested by the postmaster at Fredonia.

That the other clerks in said Fredonia postoffice were adequate to perform the work of said office, that there were no duties for said Ball to perform as such clerk, and that said Ball never reported for duty and never performed any services in said post-office.

That said Ball was paid the salary attached to such positions until December 31, 1902, when he resigned, amounting to the sum of \$2,532.07, and that all of said sum except less than \$5 was used in paying principal and interest upon said note for \$3,040 hereinbefore mentioned and described; the practice being to renew the said note at intervals of three months, after applying thereon the checks received by Ball from the postmaster during the preceding quarter.

That on the 30th day of December, 1899, at a meeting of the Board of Directors of the Fredonia National Bank, duly held at its office, the following resolution was duly and unanimously adopted:

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*“Resolved,* That the officers of this bank be and they are hereby authorized and instructed to accept the proposition of Etta E. Hooker to give \$24,000 of the capital stock of the Seneca Oil Company in full liquidation of her notes amounting to \$20,000, also the note of F. C. Laing amounting to about \$2,000 and to release her as endorser upon the notes of Charles Ehmke of about \$1,900, F. P. Ball about \$2,600 and William B. Barker about \$1,600, she turning over to the bank the security she holds for the Ehmke note. In addition to the above the note of Warren B. Hooker of about \$31,000 held by this Bank.”

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That shortly after said December 30, 1899, pursuant to the arrangement referred to in said resolution, the said Etta E. Hooker was duly released from all liability as endorser upon the said promissory note of Frank P. Ball hereinbefore referred to. That when said note of Frank P. Ball was subsequently renewed from time to time as hereinbefore recited, the name of said Etta E. Hooker did not appear as endorser thereon and she was in no way liable thereon.

That when said Frank P. Ball resigned his position as clerk in the Fredonia postoffice December 31, 1902, there was unpaid on said note the sum of \$1,000 and when the same was last renewed on January 10, 1905, there was unpaid on the same about the sum of \$700; he having paid thereon, after Mrs. Hooker's release and before his resignation, about \$1,600 besides the interest; and he having paid thereon since his resignation about \$300 besides the interest.

That subsequent to the resignation of Frank P. Ball, as aforesaid, the said Melvin H. Taylor was required to and did pay back to the United States Government the sum of \$2,532.07 so paid as salary to said Ball. That thereafter the said Ball paid to said Taylor the sum of \$32.07 and gave said Taylor his promissory note for \$2,500 upon which he has since paid to said Taylor the sum of \$650.

THIRD. That in the month of January, 1902, one Maurice Hooker, a nephew of said Warren B. Hooker, of the age of 16 years, then residing at Perrysburgh, Cattaraugus County, New York, was desirous of attending the Normal School in said village of Fredonia. Prior thereto and sometime before the said Maurice Hooker commenced attending school at Fredonia, he had a talk with the said Warren B. Hooker, in which the latter said that he thought he could get him some position in which he could earn something while attending school. That said Melvin H. Taylor, the postmaster at Fredonia, was not acquainted with Maurice Hooker until in or about the month of January, 1902. That on or about the 11th day of January, 1902, said Warren B. Hooker, Melvin H. Taylor and Maurice Hooker arranged

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that said Warren B. Hooker and Melvin H. Taylor should procure the appointment of Maurice Hooker as a laborer in the Fredonia postoffice, at a salary of at least \$400 per annum. That the only duties of such laborer were to mop the floor of the inner office and clean the windows, all of which had theretofore been done by a scrub woman at an expense of about \$12 per annum. That the appointment of Maurice Hooker or any other person to the position of laborer in said postoffice was not necessary.

That in pursuance of such arrangement or understanding, said Warren B. Hooker and Melvin H. Taylor on the 11th day of January, 1902, wrote to said George W. Beavers, who was then General Superintendent of the Salaries and Allowance Division of the United States Postoffice Department, requesting such appointment of said Maurice Hooker at said proposed salary. That said Beavers immediately thereafter caused said Maurice Hooker to be appointed laborer in the Fredonia postoffice at a salary of \$400 per annum, said Beavers and Taylor well knowing that such appointment was not needed and that the salary was grossly excessive for all the services such laborer could possibly perform.

That the said Maurice Hooker never reported for duty as such laborer, was never asked to report, never performed any service whatever, but held the position until July 1, 1903, a period of 18 months, during which time his salary amounted to \$600. That the said postmaster, Melvin H. Taylor, retained said sum of \$600 from moneys in his hands belonging to the United States, paid therefrom a small sum during each month to a scrub woman for cleaning the postoffice, and paid the remainder of such salary, amounting to upwards of \$500 to said Maurice Hooker.

That said Maurice Hooker commenced attending the Fredonia Normal School in the month of January, 1902, and continued to attend said school until about July, 1903. That the said Maurice Hooker was dismissed from the service on or about July 1, 1903. That subsequent to such dismissal, said Melvin H. Taylor was

required to and did pay back to the United States Government, said sum of \$600, so paid to the said Maurice Hooker, as salary. That before paying back and refunding said money to the United States Government, said Taylor informed said Warren B. Hooker that a demand had been made upon him for the repayment of all the moneys paid to Frank P. Ball and Maurice Hooker, as salaries, and said Warren B. Hooker replied that he, Taylor, had better do as he thought best about it.

FOURTH. That on or about the 9th day of January, 1899, the said Warren B. Hooker visited the city of Washington, D. C., and while there had a consultation with said George W. Beavers concerning the establishment of free delivery in the postoffice at Fredonia. That thereafter and on the 12th day of January, 1899, the said Beavers caused directions to be sent to the postmaster at Fredonia to appoint Thomas O'Neil, Henry J. Pemberton, George Cooper, Minerva Jeffrey and Ora Caldwell as clerks in his office, at a salary of \$600 per annum each, and in pursuance of such direction said appointments were made on the 17th day of January, 1899.

That at the time such directions were given and said appointments were made there were actually employed in said postoffice in addition to the postmaster, four clerks with salaries as follows:

Mary L. Moore, chief clerk, \$800 per year; Charles H. Landers, \$500 per year; Edwin R. Mixer, \$400 per year; Edwin W. Easton, \$400 per year.

That such clerical force was adequate to properly take care of and perform the duties of the office, that they did so take care of and perform the duties of the office and there was no necessity for the appointment of any additional clerks in said office. That on the 21st day of January, 1899, at the request of said Warren B. Hooker, made January 16, 1899, said Frank P. Ball had also been designated as clerk in said office as hereinbefore set forth; thus placing upon the roll of the office six additional clerks with no duties, at salaries of \$600 each per year.

That the said Minerva Jeffrey was then a resident of the city of Washington, had never been a resident of Fredonia, was a

member of the family with which Beavers boarded or roomed and never at any time reported for duty or performed any service in the Fredonia postoffice. The checks in payment of her salary were regularly sent to her in Washington by the postmaster, until June, 1899, at which time she was transferred to the Burlington, Vermont, postoffice. The total amount thus paid to the said Minerva Jeffrey was \$251.66. There is no evidence that said Warren B. Hooker ever knew Minerva Jeffrey or that he ever recommended her appointment.

That Henry J. Pemberton and George Cooper were residents of Fredonia at the time of their appointment. That they were not, so far as appears, notified by any one of their appointment, never performed any service, were never paid anything, and their appointments were canceled by order dated May 8, 1899.

That Ora Caldwell was, at the time of his appointment, a resident of Fredonia, but did not report for duty or perform any service until July 3, 1899, since which date he has been regularly employed as a clerk in the office, taking the place of Edwin R. Mixer, who had been transferred to another office July 1, 1899. That the said Ora Caldwell was paid for the time between January 15, 1899, and June 30, 1899, the sum of \$276.66 but rendered no service whatever during that period and was not asked to render any service.

That Thomas O'Neil was at the time of his appointment a resident of the village of Fredonia, was then and had been for a considerable period of time in the employ of said Warren B. Hooker, caring for his horses and grounds and acting as his coachman. That said Thomas O'Neil continued in the employment of said Warren B. Hooker for sometime after said appointment was made and rendered no service as such clerk. That he was appointed carrier at said office about April 1, 1899, and since April 17, 1899, has performed regular service as carrier. That the said Thomas O'Neil performed some slight duties in reference to placing mail boxes and laying out routes during two weeks preceding April 17, 1899. That he was paid salary as clerk for the time between the 15th of January, 1899, and April 1, 1899, the sum of \$126.66 for which he rendered no service whatever as clerk,



being for at least a portion of said time in the employ of said Warren B. Hooker.

That the said appointments of O'Neil, Caldwell, Pemberton and Cooper were made at the instance and request of said Warren B. Hooker and pursuant to an arrangement between him and said George W. Beavers, and were not requested to be made by the postmaster at Fredonia. Prior to the appointment of said O'Neil and Pemberton, as aforesaid, each of them had requested said Warren B. Hooker to secure him a position.

That the population of the village of Fredonia is about 4,000 and that of the city of Dunkirk about 12,000.

FIFTH. That on the 9th day of November, 1899, upon the recommendation of said Warren B. Hooker, Melvin H. Taylor was appointed postmaster at Fredonia, and shortly thereafter it was understood and arranged between said Warren B. Hooker and said Melvin H. Taylor that one Katherine K. Clark, a niece of Taylor's wife, should be appointed a clerk in said postoffice. That at the time of the making of such agreement the clerical force at said office was adequate to take care of and transact all the business therein, and there was no necessity for the appointment of said Katherine K. Clark as a clerk in said office.

That the said postoffice at Fredonia was in the classified service and the only method by which the said Katherine K. Clark could be appointed to a clerkship therein, without submitting to a civil service examination, was to have her appointed a clerk in some office not in the classified service, which was about to be placed in such classified service, and after such last mentioned office had been placed in the classified service, then to have said Katherine K. Clark transferred to the Fredonia postoffice.

That said Warren B. Hooker ascertained in some manner that the postoffice at Fort Plain, N. Y., was to be placed in the classified service early in the year 1900, and thereupon entered into communication with the said George W. Beavers with the purpose of inducing the said Beavers to have said Clark appointed to a clerkship in said Fort Plain postoffice. That said Beavers, in pursuance of the request of said Warren B. Hooker, did, on

or about the 13th day of December, 1899, cause the said Katherine K. Clark to be appointed to a clerkship in the said postoffice at Fort Plain. That there was no intention upon the part of said Warren B. Hooker, Taylor, Beavers or Clark that the said Clark should actually perform any service in said post office at Fort Plain. That the said Clark, both before and after her appointment to such clerkship at Fort Plain, resided and continued to reside at Fredonia, and did not go to Fort Plain and did not perform any service in the postoffice at that place. That the salary attached to her said clerkship at Fort Plain was the sum of \$400 per year.

That thereafter and on the 12th day of April, 1900, the said Warren B. Hooker wrote and transmitted to the said Beavers a letter, of which the following is a copy:

"SUPREME COURT OF NEW YORK.

Personal.

FREDONIA, N. Y., April 12, 1900.

MR. GEORGE W. BEAVERS,

*P. O. Department.*

My Dear Beavers:

I notice by the press that you have returned and I sincerely hope you had a pleasant and restful vacation.

Now that you are on the ground again I beg to call your attention to two or three matters. In your letter which you sent me of February 3d you indicated that there was no probability of any change in the rural deliveries at Hamlet, Chautauqua county, and Perrysburgh, Cattaraugus county, New York. I am very anxious they should remain as they have been established.

I also beg to call your attention to the matter of the appointment of Miss Katherine K. Clark to a clerkship at Ft. Plains, N. Y., in Congressman Sherman's district. What I wish to have done is, for the Postmaster at that place to send her check, or send it to you, and you can send it to her, and then you transfer her to Fredonia. We will appreciate this very much if you can take it up and have it done very soon.

Thanking you in advance, I am,

Very sincerely yours,

W. B. HOOKER.

P. S. I would like to have you procure for the Postmaster at Fredonia, 4 paper and package boxes, and 6 small letter boxes."

[SENATE JOURNAL.]

Said letter is upon the files of the United States Postoffice Department at Washington, D. C., and there is endorsed thereon, in the handwriting of said George W. Beavers, the following notation, viz.: "Has she performed service?"

That at the time of writing and sending said letter, said Warren B. Hooker knew that said Katherine K. Clark had rendered no service at Fort Plain and was not entitled to any sum whatever for salary as clerk in said office.

That on or about May 1, 1900, at the request of said Warren B. Hooker, the said Katherine K. Clark was transferred by said Beavers from the postoffice at Fort Plain to the postoffice at Fredonia, where she rendered service until about August, 1903, at which time she was reduced to the position of substitute clerk in said office. That before, during and after the time of the employment of said Katherine K. Clark in said postoffice, her services as clerk were unnecessary therein, for the reason that the clerical force in said office was adequate to discharge all the duties in said office without her assistance, and that the payment to said Katherine K. Clark of her salary during the time of her employment as clerk in said office was unnecessary and wasteful use of the moneys of the United States. That the Fredonia postoffice was classified April 1, 1899, and the Fort Plain postoffice was classified February 1, 1900.

The salary attached to the position held by said Katherine K. Clark in the Fort Plain office was \$400 per annum. Upon her transfer to the Fredonia office her salary was at once increased to \$500 and a direction made by said Beavers that the same be increased to \$700 on and after July 1, 1900.

On the communication from the Civil Service Commission to the Postmaster-General, authorizing her transfer, dated April 23, 1900, appears the following notation, in the handwriting of Beavers: "Sawyer, \$600 from date; \$700 from July 1, 1900, G. W. B. My sig. to Hooker."

On the 28th day of April, 1900, said Hooker wrote to Beavers, acknowledging the receipt of two letters from him under date of April 23d and 26th, respectively, in which he said: "The arrange-

ment concerning Miss Clark is all right and she will be delighted at what is being done for her."

On the 2d day of May, 1900, said Beavers wrote to said Hooker, informing him of the transfer of said Clark to Fredonia, and advising him that her salary had been fixed at \$600, to take effect at once, and that the postmaster had been authorized to increase her salary to \$700, to take effect July 1, 1900.

On the 5th day of May, 1900, said Hooker wrote to said Beavers concerning the proposed increase in salary of said Clark, suggesting that it would be entirely satisfactory at \$600, and that it need not be raised to \$700, but that, instead, he would like to have the salaries of Easton and Landers, two other clerks in the Fredonia postoffice, increased \$100 each. The salaries of Easton and Landers were at once increased accordingly.

On the 14th day of March, 1901, the salary of said Katherine K. Clark was increased from \$600 to \$700; on the 3d day of August, 1901, the same was increased to \$800; on the 28th day of January, 1902, the same was increased to \$900; and on the 1st day of March, 1902, the same was increased to \$1,000; all of said increases having been made by direction of said Beavers and upon the application of said Melvin H. Taylor.

SIXTH. That Hon. E. B. Vreeland was the representative in Congress from the 37th Congressional District of the State of New York, at the times of the appointment of Maurice Hooker, Ora Caldwell, Thomas O'Neil, Minerva Jeffrey, Henry J. Pember-ton, George Cooper and Katherine K. Clark to positions in the Fredonia postoffice, as hereinbefore recited. That the said Vreeland was not consulted concerning any of said appointments and had no knowledge that said appointments were to be made or had been made until long after they had actually been made.

SEVENTH. That in the month of October, 1901, the said Warren B. Hooker and Lester F. Stearns, his copartner, were owners of a building situate in the city of Dunkirk, N. Y. That on or about the 5th day of October, 1901, by written lease, they leased a portion of said building to the United States of America for use as a postoffice, for the period of ten years, commencing

on the 15th day of October, 1901, at an annual rental of \$1,350.

That thereafter and in the month of January, 1902, the said lessors and the Postoffice Department, through Beavers, canceled said lease and executed a new lease of the same premises for a term of ten years at an annual rental of \$1,500. Said new lease was dated January 27, 1902, and by its terms, was to take effect January 1, 1902.

That thereafter the said lessors and the said Beavers induced the Postoffice Department of the United States to cancel said lease of the 27th day of January, 1902, and execute a new lease for a term of ten years, dated the 20th day of May, 1902, at an annual rental of \$2,000. That there was no consideration whatever for the surrender of the second lease and the execution of the third lease. That the United States in and by the third lease, received no additional accommodation or benefit to which it was not entitled under either the first or second of the said leases.

That at the time of the execution of the said third lease, the fair rental value of the premises so leased by the said Hooker and Stearns to the United States was the sum of \$2,000.

EIGHTH. That in the years 1901 and 1902, the said Warren B. Hooker and one Lester F. Stearns were the owners of a certain building and premises situate in the city of Dunkirk, N. Y., immediately adjoining the City Hall park. Said building was erected during the summer and fall of 1901, and was completed in said fall of 1901, and is the same building hereinbefore referred to, a portion of which was leased to the United States by said Hooker and Stearns for a postoffice. The architecture of said building, next to said City Hall park was of an ornamental character and design and the same was constructed in such a manner that the light for the same substantially all came from windows, of which there was a large number, on the south side thereof and next to said park.

That on the 3rd day of December, 1901, the Common Council of the city of Dunkirk adopted a resolution which provided as follows:

*Resolved*, That the Mayor and City Clerk be and they are hereby authorized and directed, for and in consideration of the sum of one (\$1) dollar to be paid to the said city of Dunkirk by Lester F. Stearns and Warren B. Hooker, and for and in consideration of the increase in value to the City Hall park and property and the increase in value of other property in the city in the neighborhood thereof, and of the benefits to all of said property and to the inhabitants and the people of the city of Dunkirk which have been received and acquired in consequence of the erection of the new building upon the northerly side of the said City Hall park, known as the Stearns building, by Messrs. Stearns and Hooker, and for other good and valuable considerations, forthwith to execute and deliver a lease unto the said Lester F. Stearns and Warren B. Hooker, and to their heirs, executors, administrators or assigns of the free and uninterrupted right, use and easement for light and air of, in, on, over and along all that part of the City Hall property lying and being along the north side thereof and being fifteen (15) feet in width, running from Central avenue easterly to the present west line of the City Hall building and ten (10) feet in width running from said west line of said City Hall property east to Lynx street, conditioned, however, that this lease shall absolutely terminate when the city of Dunkirk shall make a bona fide legal sale and conveyance of the whole of said City Hall park, and further conditioned that this lease shall also terminate whenever, after the city shall have used substantially all that part of said City Hall park not covered by this lease, it becomes necessary to use said strip of land fifteen feet wide from Center street to the west line of said hall and ten feet wide from that point to Lynx street along the northerly side of said park upon which to construct and erect additions to the City Hall to meet the actual requirements for city purposes and not fire hall purposes.

"Said lease or agreement, however, to provide and be conditioned that the said lessors nor their heirs, executors, administrators or assigns, shall under and by virtue thereof, receive,

have or acquire no greater or other right than said right to the non-interference with said light and air and shall not receive or acquire by virtue of said contract any right whatever to the physical use or possession of the above described property or to go upon the same for any purpose, provided, however, that the same shall not in any manner lessen or affect the rights of said Stearns and Hooker in and along said north line of said property to eaves and area boxes, heretofore acquired."

That thereafter and on the 13th day of December, 1901, the Mayor of said city of Dunkirk vetoed said resolution and returned the same to said Common Council without his approval.

That thereafter and on the 17th day of December, 1901, the said Common Council of the City of Dunkirk, by a vote of at least two-thirds of all the members elected thereto, voted to sustain said resolution, notwithstanding said veto, and passed and adopted the same over the veto of the Mayor.

That thereafter and on or about the 19th day of December, 1901, one Charles J. Wirtner, a resident, citizen and taxpayer of said City of Dunkirk, commenced an action in the Supreme Court of the State of New York, against Daniel Scannell, as Mayor of the City of Dunkirk; Jacob Groesch, as clerk of the City of Dunkirk; Paul Weiss and seven others, members of the Common Council of the City of Dunkirk; and Lester F. Stearns and said Warren B. Hooker, to restrain the execution and delivery of the lease referred to in said resolution of the Common Council, upon the ground that the same was illegal and unauthorized by law, was without consideration, and contemplated a waste of the property of said city.

That one Thomas H. Larkins was the attorney for the plaintiff in said action, and the venue of said action was laid in the county of Chautauqua.

That the summons and complaint in said action were personally served upon all the said defendants, on or before December 23, 1901. That none of the defendants in said action appeared or served an answer to the complaint, except the said defendants, Warren B. Hooker and Lester F. Stearns, who appeared by their

attorney, Elton D. Warner, Esq., and served an answer which was verified by the defendant, Lester F. Stearns, on the 30th day of December, 1901.

That said answer did not demand any affirmative relief against the City of Dunkirk and was never served upon the City of Dunkirk or its attorneys.

That in the second count or subdivision of said answer there were recited and set out, as a separate answer and defense, many of the facts which were subsequently proved upon the trial of the action, as hereinafter recited, and which were subsequently recited and found in the decision made and filed, as hereinafter recited.

That the said Warren B. Hooker conferred and advised with the said Lester F. Stearns concerning the said answer and assisted in the preparation of the same.

That Truman C. White, of Buffalo, N. Y., is one of the Justices of the Supreme Court in and for the Eighth Judicial District and was such Justice in January, 1902. That within two or three days prior to January 21, 1902, the said Warren B. Hooker called upon the said White, at the Chambers of the latter in the City of Buffalo, and told him that there was a case coming down from Dunkirk or from Chautauqua County, in which said Hooker was personally interested, and asked said White to hear the case when it came. Said Hooker also told said White, in substance, that he did not think there would be any substantial contest in court, that the parties were coming down to try it and that it would not take long.

On the 21st day of January, 1902, the said Thomas H. Larkins, attorney for the plaintiff, the defendant, Lester F. Stearns, and his law partner and counsel, Mr. Bert C. Farnham, appeared before Justice White at his Chambers, and the trial of the case proceeded. Said Farnham was, at the time of said hearing, the city attorney of the City of Dunkirk, but did not appear for said city and did not appear as counsel for the defendants, Hooker and Stearns. That before the trial commenced, said Stearns stated to Justice White that the parties had substantially agreed upon what should be done in the case.



Upon such hearing and trial, the plaintiff offered no evidence, and the only witness sworn was the defendant, Stearns. After administering the oath to the witness, Justice White directed the parties to go before his stenographer and give their proofs, and paid little, if any, attention to the evidence. The evidence was taken by the stenographer and was not read over nor its substance stated to Justice White.

Thereafter, and probably on the same day, a decision in writing, containing findings of fact and conclusions of law, was presented to Justice White by said Stearns and Larkins, and said White signed the same and delivered it to said Stearns without having read it and without being informed of its contents.

Said decision, with the judgment roll in said action, was filed in the Chautauqua County Clerk's office on the 24th day of January, 1902, and judgment entered thereon.

The decision signed by Justice White and filed with the judgment roll as aforesaid, contained among other things, the following conclusion of law:

"SECOND. That the present city hall property, located at the corner of Central avenue and Fourth street, in the city of Dunkirk, N. Y., shall not be further encroached upon by extensions or additions, or by the building of further structures thereon, but shall be kept intact in its present condition until such time as it shall become necessary for the city of Dunkirk to use the same for the legitimate and necessary purposes of the city for the city hall property, and that when such time shall arrive in so further utilizing the unoccupied land now constituting the park around and about the present city hall, the same shall be so built upon and based in such a manner as not to unnecessarily work a manifest or substantial injury to the adjacent building upon the north side thereof, now owned by the defendants, Lester F. Stearns and Warren B. Hooker, known as the Stearns building, in the way of deprivation of light and air or otherwise, but that in so utilizing any portion of such park or premises about the city hall in the manner aforesaid, so far as practicable and possible, such parts or portion of the same shall be so utilized

from time to time as will least interfere with the enjoyment of said premises of the defendants. Stearns and Hooker, on the north side thereof, or to work an injury thereto, or in the diminution in the value thereof, and that in no event will the southwest corner thereof, being that portion now bounded upon the east by the city hall and upon the north by the stone walk running at right angles to Central avenue, from the Central avenue entrance to the street, be utilized until finally necessary, nor shall any structure or extension be placed along the north side of said city hall park property at any time within fifteen feet of the north line thereof, until the absolute necessities of the city shall demand and require such use for city hall purposes; except that that portion of city hall park on the northerly side thereof, and running west from Lynx street fifty feet and north of the city hall twenty-five feet shall be the first property used for additions to the present city hall building, and within the said dimensions of twenty-five feet in width bounding on Lynx street, by fifty feet in length."

Said conclusion of law was not warranted by any facts recited in the answer or proved upon the trial. The same was or purported to be based upon a finding of fact drawn from the evidence of the witness, Stearns, to the effect, in substance, that, prior to the erection of said building, the defendants, Stearns and Hooker, had had conversations with the individual members of said Common Council of the city of Dunkirk, when not in session, in which it was represented to said Stearns and Hooker by said members of the Common Council, that if said Stearns and Hooker constructed a handsome office building in which to remove the postoffice, next to the city's property the city would not erect any building upon this property, or construction of any sort, to interfere with the light and air of said building, for many years to come; and also upon the evidence of said witness, Stearns, to the effect that the erection of said building greatly benefited, improved and increased the value of the city hall property and of other property in the neighborhood.

The judgment entered in said action purported to restrain the

city of Dunkirk from erecting any building or structure upon said city hall park, in the same manner and to the same extent as recited in said second conclusion of law.

On the 25th day of November, 1904, an order was granted at a special term of the Supreme Court, held at the city of Buffalo, Justice White presiding, by which said judgment was vacated, set aside and annuled, and the findings of fact and conclusions of law, made by Justice White as aforesaid, were canceled; and said order was duly entered in the Chautauqua County Clerk's office on the 26th day of November, 1904. This was granted upon a stipulation bearing date November 2, 1904, signed by Warren B. Hooker, Lester F. Stearns, Thomas H. Larkins and Charles J. Wirtner. Said stipulation was prepared by said White and signed by said parties at his instance and request, after an inquiry instituted by him in or about the month of April, 1904.

#### CONCLUSIONS.

##### I.

That, in our opinion, said Warren B. Hooker and George W. Beavers both knew that the appointments of said Frank P. Ball, as laborer and clerk in the Fredonia postoffice, were unnecessary; and that by reason of the acts of said Hooker and Beavers, hereinbefore detailed in the second finding of fact, and the acts of Ball in connection therewith, the United States was defrauded of said sum of \$2,532.07; and that the reason and motive which influenced Warren B. Hooker in procuring the appointment of Ball first as laborer and then as clerk in said postoffice was that Ball might thereby obtain money with which to pay the said note of \$3,040 upon which Mrs. Hooker was endorser; that the said acts of said Warren B. Hooker were immoral and show a personal unfitness in him to occupy the position of justice of the Supreme Court.

##### II.

That, in our opinion, said Warren B. Hooker knew that the appointment of Maurice Hooker to the position of laborer in the Fredonia postoffice was unnecessary. That, by reason of the acts

of said Warren B. Hooker and Melvin H. Taylor, hereinbefore set forth in the third finding of fact, and the acts of said Beavers and Maurice Hooker, connected therewith, the United States was defrauded of upwards of the sum of \$500; and that said acts of said Warren B. Hooker were immoral and show a personal unfitness in him to occupy the position of justice of the Supreme Court.

### III.

That, in our opinion, said Warren B. Hooker and George W. Beavers knew that the appointments of Thomas O'Neil, Henry J. Pemberton, George Cooper and Ora Caldwell were unnecessary, and that, by reason of the acts of said Hooker and Beavers in connection with the appointment of said Ora Caldwell and Thomas O'Neil the United States was defrauded of the sum of \$276.66, paid to said Caldwell, and the sum of \$126.66, paid to said O'Neil.

That the acts of said Warren B. Hooker in connection with the appointments of Caldwell and O'Neil were culpable and show a personal unfitness in him to occupy the position of justice of the Supreme Court.

### IV.

That, in our opinion, the transaction between Katherine K. Clark, Melvin H. Taylor, Warren B. Hooker and George W. Beavers, regarding the appointment of said Clerk to a position in the Fort Plain postoffice and her transfer thence to a clerkship in the postoffice at Fredonia, was an evasion of the United States Civil Service Law; that the transaction was immoral and corrupt, and shows an unfitness on the part of said Warren B. Hooker to be and remain a justice of the Supreme Court.

### V

That, in our opinion, the acts of said Warren B. Hooker in connection with the procurement of the judgment against the city of Dunkirk, referred to and set forth in the eighth finding of fact, were corrupt and immoral, and show a personal unfitness on the part of said Warren B. Hooker to occupy the position of justice of the Supreme Court.

## VI.

That we are of the opinion that the acts of said Warren B. Hooker hereinbefore set forth in the several findings of fact, do not constitute cause for impeachment, under the provisions of section 13 of article VI of the Constitution of this State, and section 12 of the Code of Criminal Procedure, for the reason that such acts were not committed in the course of the discharge of his official duty and do not constitute willful and corrupt misconduct in office.

## VII.

That we are of the opinion that the acts of said Warren B. Hooker, hereinbefore set forth in the several findings of fact, constitute and are cause for his removal under the provisions of section 11 of article VI of the Constitution of this State.

## RECOMMENDATIONS.

We recommend that proceedings be taken by the Legislature for the removal of said Warren B. Hooker from the office of justice of the Supreme Court, in pursuance of and in accordance with the provisions of section 11 of article VI of the Constitution of this State.

Dated Albany, May 1, 1905.

ROBERT J. FISH.  
CHAS. W. MEAD.  
WM. W. WEMPLE.  
SHERMAN MORELAND.  
A. B. STEELE.  
W. D. CUNNINGHAM.  
EDWARD SCHOENECK.  
F. G. WHITNEY.  
FRANK W. STANDART.  
SEWARD SHANAHAN.  
EMANUEL S. CAHN.

## MEMORANDUM.

We have signed the foregoing report with great hesitation, believing there is grave doubt as to the interpretation of section II of article VI of the Constitution and its application to the facts in this case.

Dated May 1, 1905.

CHAS. W. MEAD.

WM. W. WEMPLE.

THE PRESIDENT: This will be received in evidence and marked Exhibit 1.

MR. STANCHFIELD: Mr. President, in support of that challenge we offer in evidence the report of the Assembly Judiciary Committee, dated, Albany, May 1st, 1905, in its entirety. I assume, Mr. Coman, there will be no question but what the document I have is a copy.

MR. COMAN: No, sir.

THE PRESIDENT: This will be received in evidence and marked Exhibit 2.

MR. STANCHFIELD: Upon that evidence, as far as that challenge is concerned, we rest.

THE PRESIDENT: The challenge is overruled. We are ready to proceed, Mr. Coman.

MR. BURNETT: Will the gentleman yield long enough for me to state it is almost impossible for us here to hear what is said in the well.

THE PRESIDENT: The Chair will endeavor to preserve absolute quiet in the room and ask any person who has the courtesy of the floor to retire if they indulge in conversation and will request the attorneys to speak as loud as possible.

MR. WADE: As a member of this joint Assembly I request to be excused from taking any part in this procedure. My reason for so doing is the well known fact to the members of the lower House of this Legislature, and to many of the upper House, that

I acted as attorney for Judge Hooker in the investigation into these matters conducted by the committee of the State Bar Association. Under such circumstances, Mr. President, I feel that it is not proper for me to take part in these deliberations. On a former occasion during the regular session I made a similar request of the lower House which was unanimously granted as I think it should be now. I make that request.

**THE PRESIDENT:** The question is upon the request of the gentleman from Chautauqua that he be excused from any participation in the proceedings of the joint Assembly. Those in favor say aye, those opposed, no. The excuse is granted.

**MR. COMAN:** Mr. President, I proposed to read from the evidence and proceedings taken before the Judiciary Committee of the Assembly upon the investigation into certain accusations against Justice Hooker, certain documentary and oral evidence. Beginning at page 109 of the printed record of the proceedings, I will read Exhibit 1, a communication from the First Assistant Postmaster-General of the United States to the Postmaster at Fredonia, N. Y., under date of October 11, 1898. Before I proceed further I would like to say that I will endeavor to make myself heard by everybody in the joint session, and if I do not, I wish that the members of the session would call my attention to it and I will do the best I can.

**MR. THONET:** May I ask the date that Judge Hooker became a justice of the Supreme Court?

**MR. CARR:** November 10, 1898. The counsel representing Justice Hooker have consented that the testimony may be read from this record as stated by Mr. Coman. There is, however, this thing to be said in connection with it, that we have reserved to ourselves the right to raise such legal objections to that testimony as may relate to its materiality, its relevancy, or to its competency.

**MR. WHITE:** Appreciating what a great hardship it is upon all of this assemblage to spend any more time than is necessary for the orderly and intelligent conduct of this proceeding,

and understanding that there are practically four legal propositions concerning this evidence which might be considered, it seems to me practically at one time, it has occurred to me that this joint assembly might by motion adopt the evidence, that part of it which I understand counsel for the respective sides have agreed upon as touching upon the charges here, in that way admitting in evidence subject to a discussion of these legal propositions, this printed testimony. It may be urged that each member ought to hear this testimony. I assume that it could be far more intelligently understood by each member reading it than can possibly occur through the reading in this large body by the counsel as is now proposed. With that end in view I move that that part of the testimony referring to the charges be admitted in evidence subject to the ruling of the presiding officer on the four questions which come as I understand it, are at issue between counsel as to the admissability or relevancy or competency of the evidence now to be submitted.

MR. STANCHFIELD: Will you make a little clearer what you refer to by those four questions?

MR. WHITE: I will leave that question to counsel.

MR. RAINES: I suppose that such a proposition as that would at once evoke from counsel on either side a dissent. It seems to me the only way we can get along with this intelligently and the only way in which the evidence will come to the knowledge of this body is by having the procedure carried on as has been already begun; that is, the testimony read and objections raised by counsel on the other side as the testimony is read, if they have any objection whatever to advance to the testimony. To take this testimony in block seems to me an impossible proceeding in this case. I trust that the motion of the senator may not prevail.

MR. CARR: I don't know whether counsel are permitted to take part in a matater of that kind, but the Senator from the 42nd need not be surprised if we have not expressed our dissent. It was because we did not exactly understand our posi-



tion here. We do dissent from that way of presenting the evidence here.

MR. WHITE: If counsel dissent, I will withdraw the motion, although it would expedite the business and I believe lead to a more intelligent understanding of the case than can be had by reading it.

THE PRESIDENT: The motion is withdrawn. Mr. Coman proceed.

MR. STANCHFIELD: Before we proceed I would like to hand up a list of witnesses, Mr. President, and ask to have you direct the Sergeant-at-Arms to subpoena them in behalf of Judge Hooker.

THE PRESIDENT: Is there any time at which you wish them to appear?

MR. STANCHFIELD: Thursday morning.

MR. COMAN: (Reading Exhibit 1.)

Laborer.

*October 11, 1898.*

Postmaster, Fredonia, N. Y.:

Sir:—You are hereby authorized to appoint Frank P. Ball as a laborer in your office with a salary at the rate of \$600 per annum.

You will please make this appointment at once and forward a report of the same to this office on form A-45.

Very respectfully,

Note.—On the original letter the name of the 1st Asst. was signed in this space.

*First Assistant Postmaster-General.*

(Carbon copy.)

MR. WAINWRIGHT: A great many of us have not been able to hear what has been going on in the well. I for one would like to be informed under what stipulation or under what order of procedure counsel for the Legislature is now reading something.

THE PRESIDENT: Counsel for the Legislature is now reading by consent of the attorneys for the respondent from page 109 of the printed case.

MR. CARR: Will there be any objection to its being taken that Perry S. Heath was the First Assistant Postmaster General at that time, and his name was the one signed there or purported to be signed.

MR. COMAN: None at all.

MR. CARR: And he remained so until 1900.

MR. COMAN: I now read Exhibit No. 2, under date of October 12, 1898, page 109:

Form A-45.

POST OFFICE, *Fredonia*, STATE, N. Y.

*October 12, 1898.*

(Stamped.)

"Received Salary and Allowance  
Division, P. O. D., 1st Asst. P. M.  
Oct. 15, 1898.

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.:

Sir:—In accordance with the provisions of *Section 419*, Postal Laws and Regulations, as amended *January 12, 1898*, I have the honor to report that on.....189 ,.....was separated from the position of.....salary \$....., in this office by....., as directed in your letter of the *11th inst.*, I recommend the following changes in the clerical force of this office.

A. R. MOORE,  
Postmaster.

Recommended to date from	Names.	Age.	Present designation.	Nature of change.	Proposed designation.	SALARIES.	
						Present.	Proposed.
Oct. 12, 1898.	Frank E. Ball.	32	.....	.....	Laborer	\$	\$600

Note.—The following also appeared across the face of blank:  
O. K. Oct. 17, '98—126, and A—10-17, '98.

MR. COMAN: I also read Exhibit 3, letter dated January 16, 1899, from W. B. Hooker to G. W. Beavers:

FREDONIA, N. Y., January 16, 1899.

Dear Beavers:—On my return home I find your letter concerning the matter of Frank P. Ball, in the Fredonia post office. If I remember it, we talked that matter over before I left Washington, but for fear we did not, I suggest that I have a great interest in Mr. Ball and want to have him retained in the classified service if possible.

Thanking you again for your kindness, I am,  
Very sincerely yours,

(Signed) W. B. HOOKER.

Mr. G. W. Beavers, P. O. Department, Washington, D. C.

Note.—The words "*Sawyer* change designation and write Hooker my signature. G. W. B.," appeared in pencil across bottom of letter.

MR. COMAN: Exhibit 4, page 111, designation of clerk.

January 21, 1899.

Sir:—I have the honor to acknowledge receipt of your letter of the 16th inst., relative to Frank P. Ball, an employee of the Fredonia, N. Y., post office, and in reply to advise you that the Postmaster has been directed to change Mr. Ball's designation from Laborer to Clerk to take effect on the 15th instant.

Very respectfully,

*Chief of Salary and Allowance Division.*

HON. W. B. HOOKER,

*House of Representatives.*

(Carbon copy:)

MR. COMAN: Exhibit No. 5, January 21, 1899.

January 21, 1899.

Sir:—You are hereby directed to change the designation of Frank P. Ball, an employee of your office, from Laborer to General Utility clerk, to take effect January 15, 1899. <sub>o</sub>

Very respectfully,

*First Assistant Postmaster General.*

*The Postmaster, Fredonia, N. Y.*

(Carbon copy.)

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MR. COMAN: Exhibit No. 6, January 23, 1902:

UNITED STATES POST OFFICE,

*Fredonia*, Chautauqua County, STATE OF N. Y.

(*Stamped.*)

"Received salary and allowance,  
Division, P. O. D. Jan. 27, 1902."  
No. 25963.

*Jan. 23, 1902.*

HON. W. M. JOHNSON,  
First Ass't. P. M. General,  
Washington, D. C.

Sir:—Enclosed please find statement of clerks time for the week ending January 18th, as you requested, and I trust that it will prove satisfactory.

Very respectfully,  
(Signed) MELVIN H. TAYLOR,

*Postmaster.*

MR. COMAN: The table accompanying this letter, being Exhibit 7, found on page 113, I will not read in full. The only portion of it which I desire to read is that portion which relates to the time said by the postmaster to have been served by Frank P. Ball during the week. The date of his arrival at the post-office each morning is given as follows:

January 13—6:41 a. m.

January 14—6:34 a. m.

January 15—6:36 a. m.

January 16—6:35 a. m.

January 17—6:35 a. m.

January 18—6:37 a. m.

And the time of his departure appearing in the third column ranging from 12:21 until 12:32 and the time of his arrival in the afternoon from 1:52 to 2 o'clock and two minutes p. m. The time of his arrival in the evening, from 5:55 to 6:52; and the time of his departure, from 8:31 to 8:33. The whole table is offered in evidence.

## FREDONIA, N. Y.

NAME OF CLERK	Date Jan. 1902	Arrival		Departure		Actual Service		Arrival		Depart- ure	
		A	M	P	M	A	M	H	M	P	M
No assistant..... Frank P. Ball.....	12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	13	6.41	2.00	12.29	4.31	10	50	.....	6.52	8.33	.....
	14	6.34	1.57	12.21	4.31	11	1	.....	5.51	8.31	.....
	15	6.36	2.02	12.21	5.58	9	41	.....	.....	.....	.....
	16	6.35	1.58	12.32	5.58	9	57	.....	.....	.....	.....
	17	6.35	1.57	12.28	5.57	9	53	.....	.....	.....	.....
Ora Caldwell.....	18	6.37	2.00	12.32	4.30	11	2	.....	5.55	8.32	.....
	12	9.50	.....	.....	1.51	4	1	.....	.....	.....	.....
	13	6.47	12.28	10.57	5.59	9	41	.....	.....	.....	.....
	14	6.49	12.21	10.57	5.51	9	38	.....	.....	.....	.....
	15	6.51	12.23	10.59	4.32	10	50	.....	5.58	8.31	.....
	16	6.50	12.31	10.59	4.28	10	39	.....	5.58	8.31	.....
Edwin W. Easton.....	17	6.49	12.58	10.44	4.33	10	5	.....	5.59	8.34	.....
	18	6.54	12.31	10.57	5.56	9	28	.....	.....	.....	.....
	12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	13	6.56	12.28	10.56	6.00	9	32	.....	.....	.....	.....
	14	6.57	12.30	10.57	4.31	10	36	.....	5.56	8.21	.....
	15	7.00	12.28	10.59	4.32	10	36	.....	5.58	8.31	.....
Chas. H. Landers.....	16	6.58	12.30	10.58	5.58	9	28	.....	.....	.....	.....
	17	6.57	12.26	10.44	5.59	9	20	.....	.....	.....	.....
	18	7.00	12.33	11.13	4.30	10	39	.....	6.03	8.32	.....
	12	9.51	.....	.....	1.07	3	16	.....	.....	.....	.....
	13	6.41	2.00	12.32	4.32	9	16	.....	6.00	8.33	.....
	14	6.34	2.01	12.36	5.58	8	49	.....	.....	.....	.....
Katherine K. Clark.....	15	6.35	2.03	12.36	5.58	8	48	.....	.....	.....	.....
	16	6.35	2.05	12.32	4.38	9	14	.....	5.58	8.32	.....
	17	6.34	2.04	12.28	4.36	10	2	.....	5.57	8.33	.....
	18	6.37	2.08	12.36	6.04	8	55	.....	.....	.....	.....
	12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	13	8.30	1.31	12.02	6.25	8	26	.....	.....	.....	.....
Katherine K. Clark.....	14	8.32	1.33	12.10	6.28	8	33	.....	.....	.....	.....
	15	8.43	1.59	12.24	6.39	8	21	.....	.....	.....	.....
	16	8.30	1.38	12.06	6.26	8	24	.....	.....	.....	.....
	17	8.41	1.40	12.04	6.30	8	13	.....	.....	.....	.....
	18	8.50	1.40	21.01	6.24	8	15	.....	.....	.....	.....

NOTE.—The words: One hour deducted from total time for breakfast taken between 7:30 and 8:30 a. m., appeared in red ink across bottom of letter opposite Chas. H. Landers, and the figures, 5-57 33-1 27-9 38-1 in pencil. The figures 4 01 and 3 16 were enclosed in circle in pencil. (Stamped) "Received Salary and Allowance Div., P. O. D., Jan. 27, 1902, No. 2."

MR. PRESIDENT: Do you desire the whole table read?

MR. CARR: We do not ask that the whole of it be read, he may read what he pleases.

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MR. COMAN: Exhibit No. 8 on page 114.

FREDONIA POST OFFICE.

Office of the Postmaster,

*Fredonia, Chautauqua Co., N. Y.*

(*Stamped.*)

"Received salary and allowance,  
Division, P. O. D., Nov. 20, 1902.  
No. 15609."

*November 19, 1902.*

HON. R. J. WYNNE,

First Ass't P. M.-General,

Washington, D. C.

Sir:—Enclosed herewith I hand you a schedule of daily time of the clerks in this office for the week ending November 15, 1902.

The average daily time is nine hours and forty-seven minutes (9-47.) You will note that one hour has been subtracted from the total daily time of Mr. Chas. H. Landers and Mr. Ora E. Caldwell, that length of time being allowed them each morning for breakfast.

Very respectfully,

(Signed) MELVIN H. TAYLOR,

*Postmaster.*

MR. COMAN: I offer in evidence table found on page 115 which I do not desire to take the time of the session to read, but merely call attention to the time of Frank P. Ball and Ora E. Caldwell are said to have arrived at and departed from the post-office each day during that time.

## POST OFFICE, FREDONIA, STATE, NEW YORK:

NOTE—The figures 5-58.03-9 40-1 54-2 appeared in pencil in left hand corner and the figures 5 00 and 4 30 enclosed in a circle in pencil.  
(Stamped) "Received Salary and Allowance Division, P. O. D., Nov. 20, 1902, No. 15, 610."

## POST OFFICE, FREDONIA, STATE, NEW YORK.

NAME OF CLERK	Date Nov. 1902	Arrival		Departure		Actual Service		Arrival	Depart.
		A	M	P	M	H	M	P	M
Frank P. Ball.....	9								
	10	6.40	2.00	12.30	4.30	11		6.00	8.40
	11	6.42	2.05	12.25	4.28	10	52	5.59	8.45
	12	6.45	2.01	12.32	4.31	10	5	6.02	8.30
	13	6.50	2.03	12.25	6.03	9	35		
	14	6.48	2.01	12.34	6.07	9	52		
	15	6.45	2.00	12.36	6.01	9	52		
Katherine K. Clark.....	9								
	10	8.30	1.44	12.06	6.38	8	30		
	11	8.42	1.34	12.00	6.27	8	11		
	12	8.37	1.30	12.00	6.33	8	26		
	13	8.39	1.25	12.02	6.18	8	16		
	14	8.30	1.38	11.59	6.25	8	16		
	15	8.32	1.30	11.55	6.25	8	18		
Ora E. Caldwell.....	9	9.45			1.45	5	00		
	10	5.57	12.30	11.00	6.00	9	33		
	11	6.02	12.26	11.00	5.51	9	23		
	12	6.02	12.30	10.59	4.20	10	1	5.55	8.42
	13	5.57	12.34	11.10	4.51	10	38	6.07	8.34
	14	6.07	12.30	10.58	4.33	10	14	5.59	8.34
	15	6.06	12.30	11.00	5.58	10	52		
Edwin W. Easton.....	9	9.45			1.15	4	30		
	10	6.45	12.25	11.01	5.57	9	28		
	11	6.50	12.28	11.00	4.34	10	58	5.50	8.32
	12	6.36	12.27	10.59	4.43	11	4	5.51	8.42
	13	6.57	12.28	11.04	5.52	9	27		
	14	6.59	12.25	10.58	5.50	9	29		
	15	6.48	12.25	11.03	4.03	11	7	5.54	8.38
Chas. H. Landers.....	9								
	10	6.30	2.00	12.25	4.31	10	2	5.55	8.31
	11	6.37	2.04	12.28	5.51	8	38		
	12	6.41	2.01	12.30	5.59	8	47		
	13	6.31	2.03	12.31	4.31	10	15	5.47	8.34
	14	6.32	2.02	12.31	4.33	30	14	5.48	8.32
	15	6.32	1.57	12.27	5.57	8	53		

Average daily time 9 hours, 47 minutes.  
Ex. No. 9, Mar. 21, 1905.

MR. PRESIDENT: Also enter on the record that page 115 is not read.

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MR. COMAN: Exhibit No. 10 on page 116.

FREDONIA POST OFFICE.

Office of the Postmaster.

*Fredonia, Chataqua County, N. Y.*

*December 26, 1902.*

*(Stamped.)*

"Received salary and allowance

Division, P. O. D. Dec. 27, 1902."

No. 26569.

HON. R. J. WYNNE,

First Assistant Postmaster-General,

Washington, D. C.

Sir.—I beg to inform you that Mr. Frank P. Ball, clerk, in the office here at Fredonia, has tendered me his resignation to take effect the first day of January, 1903.

Very respectfully,

(Signed) MELVIN H. TAYLOR,

*Postmaster.*

MR. COMAN: Exhibit No. 11 on page 116.

MR. COMAN: The next, First Assistant Postmaster General to the Postmaster at Fredonia, December 30, 1902.

(This letter which follows was marked "Ex. No. 11, Mar. 21, 1905.")

Postmaster, Fredonia, N. Y.:

*December 30, 1902.*

Sir:—Replying to your letter of the 26th instant, reporting the resignation of Frank P. Ball from the clerical force of your office, you are requested to forward a report of this resignation on form A-45, together with your recommendation for filling the vacancy.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon copy.)



MR. COMAN: Exhibit No. 12, page 117.

POSTOFFICE, Fredonia, STATE, N. Y.

December 31, 1903.

*"Received Salary and Allowance  
Division, P. O. D., Jan. 2, 1903,  
27832."*

First Assistant Postmaster General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of *Section 419 Postal Laws and Regulations, as amended Jan. 12, 1898*, I have the honor to report that on *Dec. 31, 1902*, *Frank P. Ball* was separated from the position of *gen. utility clerk*, salary \$600, in the office by resignation. Salary paid to and including *Dec. 31, 1902*.

To fill the vacancy I recommend *no* changes in the clerical force of this office.

MELVIN H. TAYLOR,  
Postmaster.

Note.—The following appeared in ink across face of blank: G. A—1, 3, '03, and A in pencil.

MR. COMAN: Exhibit No. 13, page 117.

January 5, 1903.

Postmaster, Fredonia, N. Y.:

Sir:—I beg to acknowledge receipt of your letter of the 31st ultimo, reporting the resignation of Frank P. Ball from position of general utility clerk in your office, and in reply to advise you that the same is approved to take effect Dec. 31, 1902, and the allowance of \$600 heretofore made for his salary has been discontinued from the date stated.

Very respectfully,

First Assistant Postmaster-General.

(Carbon copy.)

MR. HINMAN: I see the date on Exhibit No. 12 is December 31, 1903. •

MR. COMAN: That should be 1902, the date of Exhibit No. 12.

MR. COMAN: Exhibit No. 14, on page 118.

*January 12, 1899,*

Sir:—You are hereby instructed to appoint Thomas O'Neil, Henry J. Pemberton, George Cooper, Minerva Jeffrey and Ora Caldwell as clerks in your office at the rate of \$600 per annum, to take effect January 15, 1899.

Please report the appointments on form A-45.

Very respectfully,

*First Assistant Postmaster-General.*

The Postmaster, Fredonia, N. Y.

(Carbon copy.)

MR. COMAN: Exhibit No. 15, on page 118.

POST OFFICE, *Fredonia*, STATE, N. Y.

(Stamped.)

*"Received salary and allowance  
Division, P. O. D., 1st Ass't P. M.  
Gen., Jan. 20, 1899."*

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—As instructed in your letter of the 12th inst., I report the following changes in the clerical force of this office.

A. R. MOORE,  
Postmaster.

Recommended to date from	Names.	Age.	Present designation.	Nature of change.	Proposed designation.	SALARIES.	
						Present.	Proposed.
Jan. 15, 1899.	Thomas O'Neil.....	.....	.....	Gu.....	● Clerk.....	.....	\$600
Jan. 15, 1899.	Henry J. Pemberton.....	.....	.....	".....	".....	.....	600
Jan. 15, 1899.	George Cooper.....	.....	.....	".....	".....	.....	600
Jan. 15, 1899.	Minerva Jeffrey.....	.....	.....	".....	".....	.....	600
Jan. 15, 1899.	Ora Caldwell.....	.....	.....	".....	".....	.....	600

Note.—The following appeared in right hand corner of blank:  
A—1, 24, '99.

MR. COMAN: Exhibit No. 16, page 118.

Appointment of clerks.

*January 24, 1899.*

Sir:—The appointments of Thos. O'Neil, Henry J. Pemberton, George Cooper, Minerva Jeffrey and Ora Caldwell as general

utility clerks in your office at a salary of \$600 per annum to date from the 15th instant, as recommended in your letter of January 17th, are approved.

Very respectfully,

*First Assistant Postmaster-General.*

The Postmaster, Fredonia, N. Y.  
(Carbon copy.)

MR. FISH: As there is no name attached to those letters perhaps it would be well for the counsel to explain how they were written.

MR. COMAN: The record in this case contains a stipulation that these letters which I am reading from the Postoffice Department are taken from carbon copies of the original letters which are now on file in the Postoffice Department at Washington, D. C. The original letters were signed by the person occupying the position designated at the end of the letter and were duly mailed and transmitted to the persons to whom they are directed at or about the time of their date.

MR. PRESIDENT: The Chair is not aware that this stipulation here contains any such stipulation.

MR. COMAN: It may be conceded now that statement I have made is a correct and accurate statement.

MR. CARR: That is substantially so I take it and in that connection for the information of the joint assembly it may be taken as a fact that Perry S. Heath was First Assistant Postmaster-General during the time of these letters and down to some time in the middle of the year 1900.

MR. PAGE: I would suggest that any stipulation heretofore made have no bearing upon this proceeding and the stipulation should be renewed here. If there are any stipulations we should know them and they should be entered upon the record. I think the records should show them.

THE PRESIDENT: Does the stipulation, Mr. Conan, appear in the printed record we have before us?

MR. COMAN: It does.

THE PRESIDENT: On what page?

MR. COMAN: I will ask one of my associates to find it.

MR. BRACKETT: I suggest to counsels on both sides this: Beyond all doubt the reading of this testimony from the record, which is not primary evidence, is made good by the fact that no objection is made on behalf of the counsel for the remonstrant, but if there is anything further as to the fact that any one was the occupant of an office in Washington, or that the letters were mailed or received or any such thing of that character, it would not be covered by the failure to object to the reading of the letters themselves; then I think the position taken by the Senator from the 19th is correct,—that the stipulation should be renewed here in order that this record should be entirely complete.

THE PRESIDENT: The stipulation we are having now is to cover the fact that there was no name signed to letters which are now being read.

MR. CARR: That appears on page 47.

MR. BRACKETT: I desire to call attention particularly to the fact that the counsel stated that there was some kind of a concession that the letters had been mailed and received.

MR. COMAN: I understand that to be conceded now upon the record here.

MR. BRACKETT: It should be so noted.

MR. COMAN: It is noted. I will read the stipulation—

THE PRESIDENT: Does the Chair understand the counsel for the remonstrant to so concede.

MR. STANCHFIELD: Yes.

MR. COMAN: And I think that covers it by the stipulation on page 47.

THE PRESIDENT: Is it not a fact that the letters bear no signature? I think that part of the stipulation on page 47 might go in the record.

MR. COMAN: Very well, I will read it from page 47 of the record the following concession made by Mr. Carr, as counsel for Justice Hooker: "It is conceded that the letters of which copies have been authenticated, to which no signatures are given apparently coming from the postoffice department, were signed by the Assistant Postoffice General, or Acting Postoffice General, according to the designation appearing in the letter."

MR. CARR: Better read the rest of that and then what is below.

MR. COMAN: Now it is conceded "That they were duly transmitted in the regular course of business to the persons to whom they were addressed."

MR. CARR: Read just what I said there. "The inferences that they were transmitted in the ordinary way to the parties to whom they were addressed." That was the concession that was made.

MR. COMAN: Well do you make a distinction—

MR. CARR: No I don't make any distinction, but just put it the stipulation that was there.

THE PRESIDENT: The Chair understands the attorney for the remonstrant to renew this stipulation.

MR. CARR: Certainly, only I asked him to read the whole of it.

MR. COMAN: Exhibit 17, page 119.  
Clerical force.

*May 8, 1899.*

Sir:—You are hereby directed to cancel the appointments of Henry J. Pemberton and George Cooper, appointed to clerkships in your office on January 15th last. Minerva Jeffrey and Ora

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Caldwell will be continued on your rolls for the present at the rate of \$600 per annum, each.

Very respectfully,

*Acting First Assistant Postmaster-General.*

The Postmaster, Fredonia, N. Y.

(Carbon copy.)

Note.—The following appeared in ink in left hand corner of letter: E; and the following in the right hand corner: A—5, 8, '99.

Ex. No. 17, Mar. 21, 1905.

MR. COMAN: Exhibit 18, page 120.

*Memorandum.*

Sawyer File.

Fredonia, N. Y.

Free Delivery.

Thomas O'Neil,  
Henry J. Pemberton,  
George Cooper,  
Minerva Jeffrey,

At \$600.

Ora Caldwell,  
One mounted.

Note.—(All of the above is in lead pencil.)

Ex. No. 18, Mar. 21, 1905. ●

MR. CARR: Then I take it it will be proper for it to appear in the minutes that that memorandum "Sawyer file" was in the handwriting of George W. Beavers and the other handwriting is not identified?

MR. COMAN: Yes, sir; that may be so taken. ●

MR. COMAN: Exhibit 19, page 121.

*United States Post Office.*

(Stamped.)

"Received salary and allowance,  
Division, P. O. D., July 12, 1899."

July 10, 1899.

First Assistant ~~Post~~master-General,

Washington, D. C.

Sir:—Mr. Edwin R. Mixer, a former clerk in this office, has I understand been transferred to the Buffalo, N. Y. Office since the first inst. by the Depart't, but this office has not been notified of the change, and that such position in the service has been discontinued at this office.

Very respectfully,  
(Signed) A. R. MOORE,  
Postmaster.

Ex. No. 19, Mar. 21, 1905.

MR. COMAN: Exhibit No. 20, page 121.

July 19, 1899.

Transfer of clerk.

Sir:—I beg to acknowledge receipt of your letter of the 10th inst. relative to the transfer of Edwin R. Mixer from your office, and in reply to advise you that Mr. Mixer has been transferred to the Buffalo, New York Post Office to take effect July 1, 1899.

You are therefore requested to report the separation of Mr. Mixer from the clerical force of your office on form A-45.

Very respectfully,

*First Assistant Postmaster General.*

The Postmaster,

*Fredonia, N. Y.*

MR. COMAN: Exhibit 21, which I do not desire to read, reporting the transfer of Mr. Mixer to the Buffalo Office on page 122, but I desire it to be considered in evidence.

MR. CARR: You don't read it?

MR. COMAN: Simply for the purpose of fixing a date.

Exhibit 22, page 123, which I desire considered in evidence but will not take the time to read. Exhibit 23—

MR. GRADY: Exhibit 22, I take it is the letter dated July 27th, 1899.

MR. COMAN: July 27, 1899.

MR. RAINES: Mr. President: Counsel appears to be putting in evidence here items for certain purposes. The jury sits here and sees here some certain things have gone in evidence. What those things are there is not any way by which they can tell unless hereafter they read this evidence as printed. I suggest that if we are expected to pass on any portion of this matter that he wants considered in evidence and is not reading, there is a mistake being made by not giving us exactly what the evidence is.

THE PRESIDENT: The Chair will require all evidence spread upon the record to be read excepting such as the joint Assembly make consent may be spread upon the record without reading. That is the reason the Chair asked that the table that appeared upon a previous page, I think 117, should be spread upon the record without reading.

MR. COMAN: Mr. President: May I ask the Senator whether he is referring to the exhibits which I have not read?

MR. RAINES: Yes.

MR. CARR: Read them, Mr. Coman.

MR. COMAN: Very well. I will then go back and read Exhibit 21, page 122:

Form A-45.

POST OFFICE, Fredonia, STATE, New York,

July 22, 1899.

(Stamped.)

"Received salary and allowance  
Division, P. O. D., July 24, 1899."

First Assistant Postmaster General,

Salary and Allowance Division,

Washington, D. C.

Sir:—In accordance with the provisions of Section 419, Postal Laws and Regulations, as amended Jan. 12, 1898, I have the



honor to report that on *July 1, 1899*, *Edwin R. Miner* was separated from the position of *stamper*, salary \$400, in this office by *transfer to Buffalo, N. Y. Post Office*.

To fill the vacancy I recommend the following changes in the clerical force of this office.

A. R. MOORE,  
Postmaster.

Note.—The following appeared acrossed face of blank in ink: No change recommended, a—7, 27, '99; and O K, G in pencil.

Ex. No. 21, Mar. 21, 1905.

MR. COMAN: Exhibit 22, see page 123.

July 27, 1899.

Transfer of clerk.

Sir:—I beg to acknowledge receipt of your letter of the 22d instant, reporting the separation of Edwin R. Mixer from the clerical force of your office by transfer to Buffalo, New York, and in reply to advise you that the same is approved and the allowance of \$400 heretofore made for Mr. Mixer's salary, has been discontinued from the 1st instant.

Very respectfully,

*First Assistant Postmaster-General.*

The Postmaster,

*Fredonia, N. Y.*

MR. COMAN: Exhibit 23, page 123:

Postmaster, Fredonia, N. Y.

Sir:—In compliance with your recommendation of March 31, 1902, the following changes in your roster of clerks are approved to take effect July 1, 1902:

Easton, Edwin W. Stamper to Mailing Clerk..	\$600 to \$800.
Landers, Charles H. Stamper to Letter Distributor .....	600 to 800.
Caldwell, Ora, General utility clerk to Stamp-clerk .....	600 to 800.

Salaries of assistant postmasters being paid from a separate appropriation, your recommendation that the salary of your assistant be increased, will be considered, and you will be further advised in regard to the same.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Page 124, Exhibit 24:

POST OFFICE, *Fredonia*, STATE, N. Y.

*March 31, 1902.*

(Stamped.)

"Received salary and allowance,  
Division. P. O. D., April 1, 1902.  
No. 90144."

First Assistant Postmaster General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of *Section 419*. Postal Laws and Regulations, *as amended Jan. 12, 1898*, I have the honor to report that on....., 190 ,..... was separated from the position of....., salary \$....., in this office by..... Salary paid to and including....., 190

To fill the vacancy I recommend the following changes in the clerical force of this office.

MELVIN H. TAYLOR,  
Postmaster.

Recommended to date from	Names.	Age.	Present designation.	Nature of change.	Proposed designation.	SALARIES	
						Present.	Proposed.
July 1st. ....	Edwin W. Easton. ....	29	Stamper. ....		Mailing clerk. ....	\$800	\$800
July 1st. ....	Chas. H. Landers. ....	30	Stamper. ....		Letter distributor. ....	600	800
July 1st. ....	Ora Caldwell. ....	31	Gen. utility clerk. ....		Stamp clerk. ....	600	900
July 1st. ....	Chauncey D. Sessions. ....	24	Chief clerk. ....		Chief clerk. ....	1,200	1,500

G. W. B.

MR. COMAN: And may it be conceded, gentlemen, that wherever the signature G. W. B. appears upon any of these letters which are in evidence that it is in the handwriting of George W. Beavers?

MR. CARR: That was the concession that was made before and it is made now.

MR. COMAN: Exhibit 25, page 125:  
Form A-45.

POST OFFICE, *Fredonia*, STATE, N. Y.

*March 19, 1903.*

(Stamped.)

"Received salary and allowance Division,  
P. O. D., March 21, 1903, No. 53,960."

First Assistant Postmaster General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provision of the Postal Laws and regulations, edition of 1902 *chapter 4, title 2*, I have the honor to report that on . . . . ., 190 , . . . . . was separated from the position of . . . . ., salary \$. . . . . in this office by . . . . . Salary paid to and including . . . . ., 190 .

To fill the vacancy I recommend the following changes in the clerical force of this office.

MELVIN H. TAYLOR,

Postmaster.

Recommended to date from	Name.	Age.	Present designation.	Nature of change.	Proposed designa'tion.	SALARIES.	
						Present.	Proposed.
July 1st, 1903. .	Edwin W. Easton . . .	28	Mailing clerk. . .	. . . . .	. . . . .	\$800	\$900
July 1st, 1903. .	Ora Caldwell. . . . .	32	Stamp clerk. . . .	. . . . .	. . . . .	800	900
July 1st, 1903. .	Chas. H. Landers. . .	31	Letter distributor	. . . . .	. . . . .	800	900

Note.—The initials G. W. B. appeared in blue pencil across face of form.

MR. COMAN: Exhibit 26, page 125:

*March 25, 1903.*

Postmaster, *Fredonia*, N. Y.:

Sir:—In compliance with your recommendation of the 19th instant, the following changes in your roster of clerks are approved to take effect July 1, 1903:

Edwin W. Easton, mailing clerk. . . . . \$800 to \$900  
Ora Caldwell, stamp clerk. . . . . 800 to 900  
Charles H. Landers, letter distributor. . . . . 800 to 900

Very respectfully,

*Acting First Assistant Postmaster-General.*

(Carbon copy.)

Ex. No. 26, Mar. 21, 1905.

MR. COMAN: Exhibit 27, page 126. Memorandum:  
(On back of envelope in pencil.)

Fredonia, N. Y.

F. P. Ball,

Thomas O'Neil, April 1—99, \$600 Gu.

H. J. Pemberton,

Geo. Cooper.

(On front of official P. O. Dept. envelope in pencil.)

Geo. W. Beavers,

*Personal.*

MR. CARR: Read what follows there.

MR. COMAN read as follows:

"MR. CARR: Does it appear in whose handwriting that memorandum is, except the 'Geo. W. Beavers?'

"MR. COMAN: No, it doesn't, except the 'Geo. W. Beavers.'"

MR. BRACKETT: Are those concessions made here?

MR. COMAN: Mr. Carr asks that they be read.

MR. CARR: I ask that they be read because I assume that the same concessions would be made on the part of the prosecution here that was made before the Assembly judiciary committee.

MR. COMAN: Certainly.

MR. CARR: Of course, if I make that request and it is refused, then we know.

MR. COMAN: It will not be refused, Mr. Carr; I am reading as requested about it.

MR. CARR: The Senator from the Twenty-eighth wants to be sure that we agree about it, and I want to know that we do.

MR. COMAN read as follows:

"MR. CARR: Very well, then; it will be conceded that with the exception of the 'Geo. W. Beavers' which was in the handwriting of Mr. Beavers, the other writing is not identified."

MR. COMAN: Is that enough, Mr. Carr?

MR. CARR: Yes, sir.

MR. CARR: Mr. Coman, will you read in addition to that—

MR. COMAN (reading): "Mr. Coman: Of course, it perhaps should be stated to the members of the committee that it is stipulated that all these papers were found in the files of the Salary and Allowance Division of the Postoffice Department at Washington."

Is that admission now made here, that it may be entered upon the record.

MR. CARR: Yes, sir.

MR. COMAN: Exhibit 28, page 127.

*April 13, 1899.*

Transfer of clerk to carrier.

Sir:—Referring to the transfer of Thos. O'Neil from the position of general utility clerk at \$600 per annum to carrier, on the 1st inst., you are advised that the salary of the position of utility clerk has been discontinued to take effect on the above date.

To complete the records of this office, however, you are requested to forward the report of Mr. O'Neil's transfer on form A-45.

Very respectfully,

*Acting First Assistant Postmaster-General.*

The Postmaster,

*Fredonia, N. Y.*

(Carbon Copy.)

MR. COMAN: Exhibit 29, page 127.

POSTOFFICE, *Fredonia*, STATE, N. Y.

*April 17, 1899.*

(Stamped.)

*"Received, Salary and Allowance  
Division, P. O. D., April 29, 1899."*

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of *Section 419, Postal Laws and Regulations, as amended Jan. 12, 1898*, I have the

honor to report that on *April 1, 1899, Thos. O'Neil* was separated from the position of *general utility clerk*, salary \$600, in this office by *transfer to position of carrier at salary \$600.*

A. R. MOORE,  
Postmaster.

MR. COMAN: Exhibit 30, page 128.

*SUPREME COURT CHAMBERS, Buffalo, N. Y.*

*FREDONIA, N. Y., April 22, 1899.*

Personal.

GEORGE W. BEAVERS,

POSTOFFICE DEPARTMENT,  
WASHINGTON, D. C.:

Dear Beavers:—I am just in receipt of your letter of the 8th with enclosure, which I return to you, and I wish to thank you more than I can express for your kindness in forwarding the papers to me. I was in Washington the 14th, and called on you, but you were out. I went to the Civil Service Commission, and they showed me some of the papers. I am very glad to know that there will be no action taken in the matter by the department, and I am certainly very much pleased to have the information which you send me.

I wish to thank you for your kindness in arranging the Wells-ville matter for me, and of the other good things which you are continually throwing in my pathway.

Very truly yours,

(Signed) W. B. Hooker.

Enclosure.

Note.—The words, "Sawyer, Return clippings with simple ackt.—Papers to be returned to me.—G. W. B.," were written across top of letter in red ink.

MR. COMAN: May it be stipulated that Mr. Sawyer, at that time was a clerk in the Division of Salaries and Allowances, as appears on the record at the bottom of page 28?

MR. CARP: Yes.

MR. COMAN: Ex. 31—page 129.

POSTOFFICE DEPARTMENT,  
FIRST ASSISTANT POSTMASTER-GENERAL,  
SALARY AND ALLOWANCE DIVISION.

Transfer.

Washington, June 5, 1899.

Sir:—I am in receipt of a certificate to cover the transfer of Miss Minerva Jeffrey from a clerkship in your office to a similar position in the Burlington, Vt., postoffice.

Her services will be discontinued in your office at the close of business on June 15, 1899, and the position itself will be abolished from that date.

Please report her separation on the proper blank, A-45.

Very respectfully,

(Signed) PERRY S. HEATH,  
First Assistant Postmaster-General.

The Postmaster, Fredonia, N. Y.  
G. W. B.

MR. COMAN: Exhibit 32, page 129.

Form A-45.

(Stamped.)

POSTOFFICE, FREDONIA, STATE, N. Y.,

June 16, 1899.

*"Received Salary and Allowance  
Division, P. O. D., 1st Ass't P. M.  
General, June 19, 1899."*

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of Section 419 Postal Laws and Regulations, as amended Jan. 12, 1898, I have the honor to report that on June 15, 1899, Minerva Jeffrey was separated from the position of general utility clerk, salary \$600, in this office by transfer and such position abolished from that date.

A. R. MOORE,  
Postmaster.

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MR. STANCHFIELD: Do you desire to read the note at the bottom of that?

MR. COMAN: The note at the bottom of Ex. 32, is as follows:  
"Note.—The following appeared across face of letter: O. K. G. W. B. in pencil and A-6-20 '99, in ink."

Exhibit 33, page 130.

June 22, 1899.

Transfer of clerk.

Sir:—I beg to acknowledge receipt of your letter of the 16th instant, reporting the transfer of Minerva Jeffrey from the position of general utility clerk in your office at a salary of \$600 on June 15, 1899, and in reply to advise you that the same is approved and the allowance for the position has been discontinued from the date stated.

Very respectfully,

*First Assistant Postmaster-General.*

The Postmaster,  
Fredonia, N. Y.  
(Carbon Copy.)

MR. COMAN: Exhibit 34, page 131.

"Telegram."

BUFFALO, N. Y., Dec. 7th.

HON. J. S. SHERMAN, *House of Reps., Washington, D. C.*

Let Beavers appoint Miss Clark, Fort Plains, so she can be transferred to Fredonia. See him please.

● W. B. HOOKER.

MR. COMAN: Exhibit No. 35, page 131.

HOUSE OF REPRESENTATIVES.

WASHINGTON.

December 8, 1899.

DEAR MR. BEAVERS: In the absence of Mr. Sherman, I enclose telegram over which I am aware there has been some talk.

Sincerely,

(Signed)

H. E. DEIVENDORF,

*Secretary.*



(In pencil.) "Allowance to be cut off when classified."

(In ink.) "Sawyer;—Appoint Miss Clark, Fort Plain, N. Y. at \$400 for months.

(Signed)

"G. W. B."

MR. RAINES: Mr. President, I would inquire of counsel if he does not wish it to appear that the Hooker telegram which he has put in evidence was in the file of 1899?

MR. CARR: Yes, the year is 1899, and that somewhere in the record, which I will read, appears, but it may be conceded now.

THE PRESIDENT: Is that conceded by the counsel for the respondent?

MR. CARR: Yes, sir.

MR. COMAN: Conceded that the words "Allowed to be cut off when classified" is in the handwriting of George Sawyer, who was clerk in the Allowance Division. The notation "Sawyer appoint Miss Clark, Fort Plain, N. Y. at \$400 per month—it should be per annum—G. W. B." is in the handwriting of George W. Beavers. That is conceded, is it, gentlemen?

MR. CARR: It is.

MR. COMAN: Exhibit 36, page 132.

SUPREME COURT OF NEW YORK.

FREDONIA, N. Y., December 9, 1899.

Personal.

MR. GEORGE W. BEAVERS, *Salary Allowance Clerk, Washington, D. C.*

My dear BEAVERS: I wish to thank you for your kind letter concerning the clerkship. I have written Mr. Sherman telling him I knew you would be willing to make this appointment at Fort Plain, additional to those necessary in the office, and then transfer her here to Fredonia. I hope this can be done.

Very sincerely yours,

(Signed) W. B. HOOKER.

MR. COMAN: Exhibit 37, same page.

Additional clerk.

December 13, 1899.

POSTMASTER, *Fort Plain, New York.*

Sir:—You are hereby authorized to appoint Miss Clark as stamper in your office at a salary of \$400 per annum, to take effect at once.

Please report the appointment on form A-45.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: The following notation (in pencil) "James C. Delong, from December 15, 1899, at \$600, trans. after class. J. S., M. C." G.

MR. COMAN: Exhibit 37, the following stipulation appears, which I suppose may now be made, that the Exhibit 37, is in the handwriting of George W. Beavers.

MR. CARR: Not that the letter——

MR. COMAN: The indorsement upon the letter.

MR. CARR: Yes, that notation.

MR. COMAN: The notation upon Exhibit 37, is in the handwriting of Beavers?

MR. CARR: Yes, sir.

MR. COMAN: Exhibit 40, at the bottom of page 133.

MR. GRADY: You are skipping from 37 to 40.

MR. CARR: 37 was the last one.

MR. COMAN: Do you desire to have 38 and 39 read?

MR. CARR: Why not.

MR. COMAN: They have no relevancy. I will read them, however, if anybody desires it.

MR. GRADY: That would preserve the numbers of the exhibits in your case.

MR. COMAN: Exhibit 38.

Dec. 14, 1899.

*Postmaster, Fort Plain, N. Y.*

Appoint James C. DeLong at six hundred from 15th instant.  
Letters follows.

MR. COMAN: Exhibit 39:

Additional clerk.

December 14, 1899.

*Postmaster, Fort Plain, N. Y.*

Sir:—Confirming my telegram of even date, you are hereby authorized to appoint James C. DeLong as a clerk in your office at a salary of six hundred dollars per annum, to take effect December 15, 1899.

Please report the appointment on form A-45.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Exhibit 40, same page:

POSTOFFICE, FORT PLAIN, STATE, N. Y.

(Stamped.)

Dec. 14, 1899.

*"Received salary and allowance*

*Div. P. O. D., Dec. 16, 99—03400."*

First Assistant Postmaster General,

Salary and Allowance Division,

Washington, D. C.

Sir:—In accordance with the provisions of *Section 419, Postal Laws and Regulations*, edition of 1893, I have the honor to report *the following change in the clerical force of this office (involving no expenditure in excess of clerk hire allowance) and to request your approval of the same.*

EMIEL REBELL,

Postmaster.

Recommended to date from	Names.	Age.	Present designation	Nature of change.	Proposed designation.	SALARIES. Off.	On.
Dec. 15. ....	Katherine K. Clark...	31	.....	.....	Stamper.....	.....	\$400
Dec. 15. ....	Jas. C. De Long.....	35	.....	.....	General utility.....	.....	600

G

Note.—The following appeared across face of blank in blue pencil: Sawyer—O. K.—G. W. B.—and also a-1, 8, 1900 in ink.

MR. COMAN: Exhibit 41:

“Telegram”

*Dated Fort Plain, N. Y., 15.*

*Dec. 1—*

HON. PERRY S. HEATH, *First Ass't Postmaster General, Washington, D. C.*

Letter received. Does James C. DeLong's appointment cancel Miss Clark, or shall I appoint both. Answer.

EMIEL REBELL,  
*Postmaster.*

(Stamped) “Received Salary and Allowance Division, P. O. D.  
Dec. 15, 1899. No. 03325.”

MR. COMAN: Exhibit 42:

(In pencil)—“Western Union.”

*December 15, 1899.*

*Postmaster, Fort Plain, N. Y.*

Appoint both LeLong and Clark. Report on Form A-45.  
(Carbon copy.)

Ex. No. 42, Mar. 21, 1905.

MR. COMAN: Exhibit 43:

*December 19, 1899.*

Appointment of clerks.

*Postmaster, Fort Plain, N. Y.*

Sir:—I return herewith for completion your communication of the 14th instant reporting two appointments.

Please state the full name of Miss Clark, and the ages of both Miss Clark and Mr. DeLong.

Very respectfully,

(Inclosure.)

*First Assistant Postmaster General.*

(Carbon copy.)

Ex. No. 43, Mar. 21, 1905.

MR. COMAN: Exhibit 44, same page:

FORT PLAIN, N. Y., Dec. 28, 1899.

HON. GEORGE W. BEAVERS, *Chief Salary and Allowance Division,*  
P. O. D., Washington, D. C.

My dear Sir:—I respectfully make application for two additional clerks for the Fort Plain, N. Y., postoffice. I trust you will find it possible to comply with this request.

I am sir, with great respect,

Very truly yours,

(Signed) EMIEL REBELL, P. M.

(In pencil)—“Miss Clark for Hooker.

James C. DeLong for Sherman.

One add'l clerk at \$400.

MR. COMAN: Exhibit 45, page 136:

December 30, 1899.

Postmaster, Fort Plain, N. Y.

One additional clerk at four hundred authorized. Letter follows.

MR. COMAN: Exhibit 46, same page:

December 30, 1899.

Additional clerk.

Postmaster, Fort Plain, N. Y.

Sir:—Referring to my telegram of even date, you are hereby authorized to employ one additional clerk under the designation of stamper at a salary of four hundred dollars per annum, to take effect at once.

Please report the appointment on form A-45, in connection with report called for under date of the 19th instant.

Very respectfully,

*First Assistant Postmaster-General.*

In pencil: “Wire disallowance,  
(Signed) G. W. B.”

G.

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MR. COMAN: Exhibit 47, same page:

UNITED STATES POSTOFFICE.

FORT PLAIN, N. Y., Dec. 31, 1899.

PERRY S. HEATH, *First Ass't P. M. G.*

Dear sir:—Your telegram and letter authorizing me to employ one additional clerk as stamper, and to report the same on the enclosed form. We are in need of this clerk in our own office. Do you wish me to fill in the name, if so, please return the same for correction.

Yours resp'y,

(Signed) EMIEL REBELL, *P. M.*

MR. COMAN: Exhibit 48, page 137.

Appointment of clerks.

January 5, 1900.

*Postmaster, Fort Plain, N. Y.*

Sir:—I again return your report of the 14th ultimo, for completion.

This report should show the name of the additional stamper at \$400 per annum, authorized by the Department to take effect December 30, 1899.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Exhibit 49, same page:

January 6, 1900.

*Postmaster, Fort Plain, N. Y.*

My letter December thirtieth, authorizing additional stamper at four hundred was an error. Return your report of December fourteenth showing appointments of Clark and DeLong. These two clerks are the only ones allowed.

MR. COMAN: Exhibit 50, same page:

UNITED STATES POSTOFFICE,

FORT PLAIN, N. Y., Jan. 6, 1900.

PERRY S. HEATH, *First Ass't P. M. G., Wash., D. C.*

Sir:—Enclosed find report called for by your telegram to-day.

Yours resp'y,

(Signed) EMIEL REBELL, *P. M.*

MR. COMAN: Exhibit 51, bottom page 138:

*Jan. 8, 1900.*

Appointment of clerks.

*Postmaster, Fort Plain, N. Y.*

Sir:—The appointments of James C. DeLong and Katherine K. Clark as general utility clerks at six hundred dollars per annum, and stamper at four hundred dollars per annum respectively, as recommended by you under date of the 14th ultimo, are approved to take effect December 15, 1899.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Exhibit 52, Bottom page 139.

UNITED STATES POSTOFFICE,

FORT PLAIN, NEW YORK, *Jan. 23, 1900.*

Hon. GEORGE W. BEAVERS,

My dear sir:—I enclose a letter from our mutual friend Congressman Sherman, which I fail to understand; he says \$58 per month, and you will also enclosed a letter from the Department authorizing me to pay six hundred per annum.

As yet I have not paid DeLong anything, thinking perhaps he might be paid by a direct warrant from the Auditor.

I wish you would place me right in this matter, and write me a confidential letter, which will be treated as such.

Yours resp'y,

(Signed) EMIL REBELL, *P. M.*

P. S. Please return the enclosed letter.

Yours,

REBELL.

MR. COMAN: Exhibit 53, page 140.

Salary of J. C. De Long.

*January 24, 1900.*

Mr. EMIEL REBELL, *Postmaster, Fort Plain, N. Y.*

Dear sir:—I beg to acknowledge receipt of your letter of the 23rd inst., enclosing a letter to you from Congressman Sherman in which he states that the salary of J. C. DeLong, recently appointed a clerk in your office, should be paid at the rate of fifty-

eight dollars per month. This statement is erroneous, as the salary authorized by the Department for Mr. DeLong is six hundred dollars per annum. He is therefore entitled to twenty-seven dollars and seventy-two cents for seventeen days' service in the month of December, and at the rate of one hundred and fifty dollars per quarter thereafter, to be apportioned as shown by the official salary table. You should pay his salary and take vouchers in the same manner that you pay the balance of your clerical force.

Mr. Sherman probably misunderstood me when he called at my office, or the statement contained in his letter is a typographical error, as the salaries of all postoffice clerks must be paid in even hundred of dollars (annual rate).

I return herewith Mr. Sherman's letter and Department letter of December 14, as per your request.

Very respectfully,

*Chief, Salary and Allowance Division.*

MR. COMAN: Exhibit 54, page 141.

*Feb. 3, 1900.*

Transfer of clerk.

*Postmaster, Fort Plain, N. Y.*

Sir.—The postmaster at New York, N. Y., has been authorized to transfer James C. DeLong from your office to a clerkship in his office to take effect on the 5th instant. You will therefore pay Mr. DeLong his salary to and including the fourth instant, from which date the allowance will be discontinued, as the position made vacant by his transfer is not to be filled.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Exhibit 55, page 141.

(Notation in pencil) Stamper \$400, App't Dec. 15, '99.

SUPREME COURT OF NEW YORK.

FREDONIA, N. Y., April 12, 1900.

Personal.

MR. GEORGE W. BEAVERS, *Postoffice Department, Washington, D. C.*

My dear Beavers:—I notice by the press that you have re-



turned, and I sincerely hope you had a pleasant and restful vacation.

Now that you are on the ground again I beg to call your attention to two or three matters. In your letter which you sent me of February 3rd, you indicated there was no probability of any change in the rural deliveries at Hamlet, Chautauqua County, and Perrysburg, Cattaraugus County, New York. I am very anxious they should remain as they have been established.

I also beg to call your attention to the matter of the appointment of Miss Katherine K. Clark to a clerkship at Ft. Plains, N. Y., in Congressman Sherman's district. What I wish to have done is, for the postmaster at that place to send her a check, or send it to you, and you can send it to her, and then you transfer her to Fredonia. We will appreciate this very much if you can take it up and have it done very soon.

Thanking you in advance, I am,

Very sincerely yours,

(Signed) W. B. HOOKER.

P. S.—I would like to have you procure for the postmaster at Fredonia, 4 paper and package boxes, and 6 small letter boxes.

(Notation in ink) Dec. 15. Has she performed service?

O. K.

MR. COMAN: The notation at the top in lead pencil, "Stamper \$400—App't. Dec. 15, '99." Outside the reference to rural deliveries "no change" in ink. It has no date. Outside "What I wish to have done is, for the postmaster at that place to send her a check or send it to you" is the notation "Dec. 15." At the bottom on the margin is "Has she performed service."

These notations are in the handwriting of George W. Beavers.

MR. COMAN: Exhibit 56, page 143.

April 14, 1900.

Transfer.

*The Civil Service Commission, Washington, D. C.*

Gentlemen:—I have the honor to request a certificate to cover the transfer of Miss Katherine K. Clark from clerkship in the

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Fort Plain, N. Y., postoffice to a similar position in the Fredonia, N. Y., postoffice.

Miss Clark was originally appointed in the Fort Plain, N. Y., postoffice, December 15, 1899.

Very respectfully,

*First Assistant Postmaster-General.*

MR. COMAN: Exhibit 57, bottom of page 143:

G. U. L.

J. T. D.

UNITED STATES CIVIL SERVICE COMMISSION, WASHINGTON, D. C.

*April 14, 1900.*

*The Honorable, The Postmaster General.*

Sir:—Referring to your request of April 14, for a certificate to cover the transfer of Miss Katherine K. Clark from a clerkship in the Fort Plain, N. Y., postoffice, to a similar position in the Fredonia, N. Y., postoffice, the Commission has to state that the roster received from the postmaster giving the names of the clerks who were brought into the classified service by the establishment of the free delivery service on February 1, 1900, does not contain the name of Miss Clark. If an error was made in not reporting her as one of the employees of the office on the date of the establishment of the free delivery service, the postmaster should submit a corrected roster.

Very respectfully,

JOHN R. PROCTER,  
*President.*

MR. COMAN: Exhibit 58, page 144.

POSTOFFICE DEPARTMENT—FIRST ASSISTANT POSTMASTER-GENERAL—SALARY AND ALLOWANCE DIVISION, WASHINGTON.

*April 14, 1900.*

(Stamped on back.)

“Received Salary and Allowance Division, P. O. D., April 20, 1900, No. 06400.”

Transfer.

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*Postmaster, Fort Plain, N. Y.*

Sir:—Upon presenting a request to the Civil Service Commission for a certificate to cover the transfer of Katherine K. Clark from a clerkship in your office to a similar position in the Fredonia, N. Y., postoffice, The Department was informed that you had failed to report Miss Clark as a clerk in your office, on the roster submitted by you to the Civil Service Commission on February first.

You will therefore immediately advise the Civil Service Commission that through inadvertence you omitted her name from the said roster, and request that it should be placed thereon, enclosing a copy of Department letter of January 8, 1900, which authorized the appointment of James C. DeLong and Katherine K. Clark.

You will forward this letter of notification to this office, for transmission to the Civil Service Commission.

Very respectfully,

PERRY S. HEATH,

*First Assistant Postmaster-General.*

(Initials in ink) "G. W. B."

MR. COMAN: Exhibit 59, page 145.

UNITED STATES POST OFFICE.

FORT PLAIN, N. Y., *April 19, 1900.*

*First Ass't P. M. G.*

Sir:—I herewith return the enclosed letter as requested, and have notified the Civil Service Board.

Yours resp'y,

(Signed)

EMILE REBELL, P. M.

MR. COMAN: Exhibit 60, page 146.

#### CERTIFICATE FOR TRANSFER.

No. 2906.

*D. H. I.*

UNITED STATES CIVIL SERVICE COMMISSION.

WASHINGTON, D. C., *April 23, 1900.*

*To the Postmaster General.*

Sir:—In response to your request dated April 14, 1900, for the necessary certificate for the transfer of Miss Katherine K. Clark from the position of clerk, in the classified service of the Fort

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Plain, N. Y., post office, to the position of clerk in the classified service of the Fredonia, N. Y., post office, certification is hereby made that she may be so transferred, it appearing that she has received absolute appointment in the classified service.

Very respectfully,

(Signed) JOHN T. DOYLE,

Secretary.

(In pencil, the following notation:)

"Sawyer, \$600 from date; \$700 from July 1, 1900.

(Signed) G. W. B."

"My sig to Hooker."

MR. COMAN: Exhibit 61 at bottom of page 146.

SUPREME COURT OF NEW YORK.

FREDONIA, N. Y., *April 28, 1900.*

Personal.

MR. GEORGE W. BEAVERS, *P. O. Department, Washington, D. C.*

Dear Beavers:—On my return this morning from an absence of ten days, I find your letters of the 23rd, and 26th respectively. The arrangements you suggest in them are entirely satisfactory, and I appreciate it very much indeed. The arrangement concerning Miss Clark is all right, and she will be delighted at what is being done for her. Mr. O'Neal, the carrier, will be extremely pleased with his additional allowance.

I thank you from the bottom of my heart for this courtesy again shown me.

Very sincerely yours,

(Signed)

W. B. HOOKER.

(In pencil, the following):

"Sawyer see me,

(Signed) G. W. B."

MR. COMAN: "Sawyer see me" also the initials "G. W. B." are in Beavers' handwriting.

MR. COMAN: Exhibit 62, page 147.

*May 2, 1900.*

Transfer of Katherine K. Clark.

HON. W. B. HOOKER, *Fredonia, N. Y.*

Sir:—I have the honor to advise you that the postmaster at Fredonia, New York, has been authorized to transfer Katherine

K. Clark from the Fort Plain office to a clerkship in his office at a salary of \$600 per annum, to take effect at once.

He has also been authorized to increase her salary from \$600 to \$700 per annum, to take effect July 1, 1900.

Very respectfully,

*Chief, Salary and Allowance Division.*

(Carbon copy.)

MR. COMAN: Exhibit 63, same page:

*May 2, 1900.*

Transfer of Katherine K. Clark.

*Postmaster, Fredonia, N. Y.*

Sir:—You are hereby authorized to transfer Katherine K. Clark from the Fort Plain office to a clerkship in your office at salary of \$600 per annum, to take effect at once.

As soon as she is assigned to duty, you will please report her transfer on Form A-45.

From July first, Miss Clark's salary will be at the rate of \$700 per annum.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon copy.)

MR. COMAN: Exhibit 64, page 148:

*May 2, 1900.*

Transfer of Katherine K. Clark.

*Postmaster, Fort Plain, N. Y.*

Sir:—I beg to advise you that the postmaster at Fredonia, N. Y., has been authorized to transfer Katherine K. Clark from your office to his office.

As the vacancy in your office caused by this transfer is not to be filled, the allowance of \$400, heretofore made for Miss Clark's salary has been discontinued.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon copy.)

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Mr. COMAN: The following notation appears in pencil across the bottom of this letter: "April 30, off," also the following in ink:—"E—G, and 5, 8, 1900."

MR. CARR: You had better read what further appears about that, that that handwriting is not identified and is not assented to upon the part of Judge Hooker's counsel.

MR. COMAN: The handwriting of the notation is not identified. That may be taken.

MR. CARR: That is all I wanted.

MR. COMAN: Exhibit 65, on page 149:

Form A-45.

POSTOFFICE, *FREDONIA*, STATE, N. Y.,

*May 3, 1900.*

(*Stamped.*)

*"Received salary and allowance  
Division, P. O. D., May 5, 1900."*

First Assistant Postmaster General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of *Section 419*, Postal Laws and Regulations, *as amended Jan. 12, 1898*, I have the honor to report that on.....189..., .....was separated from the position of....., salary \$....., in this office by.....  
..... Salary paid to and including.....189..

To fill the vacancy I recommend the following changes in the clerical force of this office.

*MELVIN H. TAYLOR,*  
Postmaster.

Recommended to date from	Names.	Age.	Present designation.	Nature of change.	Proposed designation.	SALARIES Present. Proposed.
May 1.....	Katherine K. Clark...	31	.....	.....	Transferred from Fort Plain office.	.....
	• O. K. May 8, 1900. 126.				Money order clerk.	

Note.—The following appeared across face of blank, A—5, 8, 1900.

MR. COMAN: Exhibit 66, page 150.

SUPREME COURT OF NEW YORK.

FREDONIA, N. Y., May 5, 1900.

Personal.

Mr. GEORGE W. BEAVERS, *P. O. Department, Washington, D. C.*

My dear Beavers:—I am greatly obliged to you for your kindness with reference to the matter of Catherine Clark in the Fredonia P. O. Her salary will be entirely satisfactory at \$600, and you need not raise it to \$700. My reasons for making this suggestion is this: there are two young fellows in the office here, Mr. Charles H. Landers, and Mr. Edwin W. Easton, who have been here for some time, and are both very competent and capable clerks, and they are only receiving now \$500 each, and I would like to have these two young men receive a salary of \$600 each. If you can do this for me, making the raise commencing either May or June 1st, I will appreciate it very much indeed, and leave Miss Clark's salary as it is, at \$600 per annum.

Thanking you in advance for this matter, I am,

Very sincerely yours,

(Signed)

W. B. HOOKER.

(In pencil) "Sawyer, O. K. all,

(Signed)

G. W. B."

July 1, 1900.

Ex. 60, Mar. 21, '05.

MR. COMAN: Exhibit 67, page 151.

May 16, 1900.

HON. W. B. HOOKER, *Fredonia, N. Y.*

Sir:—Replying to your letter of the 5th inst., I have the honor to advise you that the postmaster at Fredonia, N. Y., has been authorized to increase the salary of Charles H. Landers and Edwin W. Easton, clerks in his office, from \$500 to \$600 per annum, each, to take effect July 1, 1900.

As you state that a \$600 salary for Miss Clark will be satisfactory to you, the postmaster has been advised that the authorization for an increase in her salary from \$600 to \$700 per annum, to take effect July 1st, next, has been cancelled.

Very respectfully,

*Chief, Salary and Allowance Division.*

(Carbon copy.)

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MR. COMAN: Exhibit 68, page 151.

May 16, 1900.

Postmaster, Fredonia, N. Y.

Sir:—In compliance with your recommendation of the 12th instant, you are hereby authorized to increase salaries of your clerks as follows, to take effect July 1, 1900.

Edwin W. Easton, Stamper, \$500 to \$600.

Charles H. Landers, Stamper, \$500 to \$600.

Referring to my letter of the 2nd instant, authorizing the transfer of Katherine K. Clark from the Fort Plain office to your office, and advising you that from July 1st her salary will be at the rate of \$700 per annum, you are advised that upon further consideration this authorization is cancelled and her salary will remain at six hundred dollars per annum for the present.

Very respectfully,

*First Assistant Postmaster General.*

(Carbon copy.)

MR. COMAN: On a slip of paper following the letter in file is the following in pencil:

"Sawyer, increase Ass't P. M. Chauncey D. Sessions, Fredonia, N. Y., 1,000 to 1,200 from Jan. 1, 1901. (W. B. H.)

G. W. B."

All in Beaver's handwriting.

Exhibit 69, page 163:  
Form A-45.

POST OFFICE, FREDONIA, STATE, N. Y.

March 14, 1901.

(Stamped)

"Received Salary and Allowance  
Division, P. O. D., March 15, 1901,  
No. 05018."

First Assistant Postmaster-General,

Salary and Allowance Division,

Washington, D. C.

Sir:—In accordance with the provisions of Section 419, Postal Laws and Regulations, as amended Jan. 12, 1898, I have the



honor to report that on ....., 190..., .....was separated from the position of ....., salary \$....., in this office by ..... Salary paid to and including ....., 190....

To fill the vacancy I recommend the following changes in the clerical force of this office.

**MELVIN H. TAYLOR,**  
Postmaster.

Recommended to date from	Names.	Age.	Present designation	Nature of change.	Proposed designation.	SALARIES	
						Present.	Proposed.
July 1st.	Katherine K. Clark	31	Money Order Clerk		Money Order Clerk	\$600	\$700

Note.—The following appeared across face of blank in blue pencil: G. W. B.

MR. COMAN: Exhibit No. 70, page 153:

UNITED STATES POSTOFFICE,

FREDONIA, CHAUTAUQUA Co., N. Y.

July 22, 1901.

(In blue pencil)

"O. K. G. W. B."

Hon. G. W. BEAVERS,  
Washington, D. C.

My dear Beavers:—I would like it very much if you could arrange so as to raise the salary of *my Money Order Clerk*, Miss *Katherine K. Clark* to \$800 per year, from July 1, 1901.

Very respectfully,

(Signed) MELVIN H. TAYLOR.

(In pencil)

"700 to \$800."

(Above letter written in pencil.)

Ex. 70, Mar. 21, 1905.

MR. COMAN: Exhibit 71, page 154:

August 3, 1901.

Postmaster,

Fredonia, N. Y.

Sir:—In compliance with your recommendation of the 22d

ultimo, you are hereby authorized to increase the salary of Katherine K. Clark, money order clerk in your office, from \$700 to \$800 per annum, to take effect July 1, 1901.

Very respectfully,

*Acting First Assistant Postmaster-General.*

(Carbon copy.)

Note.—The following appeared in ink at bottom of letter: E—G—a—8, 3, '01.

Ex. 71, Mar. 21, 1905.

MR. COMAN: Exhibit 72, page 155:

FREDONIA, N. Y., Jan. 22, 1902.

(In pencil) Sawyer, M. O. Clerk, \$800.

Hon. GEORGE W. BEAVERS,  
Washington, D. C.

(In ink) \$900, ask him to apply again when call is sent.

(Signed) G. W. B.

My dear Beavers:—I should feel thankful to you if you will raise the pay of my money order clerk, Miss K. K. Clark to \$1200 per annum, starting from January 1, 1902, or when you think best.

Very truly yours,

(Signed) MELVIN H. TAYLOR.

Ex. 72, Mar. 21, 1905.

MR. COMAN: Exhibit 73, page 155:

● January 28, 1902.

POSTMASTER, Fredonia, N. Y.

Sir:—Replying to your letter of the 22d instant, recommending an increase in the salary of Katherine K. Clark, money order clerk in your office, you are hereby authorized to increase her salary from \$800 to \$900 per annum, to take effect February 1, 1902.

This is the best that can be done at the present time, as the appropriation for clerk-hire for the current fiscal year is practically exhausted, but if you will recommend a further increase

when you are called upon to submit your estimates for the coming fiscal year, the same will receive careful consideration.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon copy.)

Note.—The following appeared across face of letter in ink: G—a—1, 30, '02, and E in pencil.

Ex. 73, Mar. 21, '05.

MR. COMAN: Exhibit 74, page 156.

*March 1, 1902.*

POSTMASTER, *Fredonia, N. Y.*

Sir:—You are hereby authorized to increase the salary of Katherine K. Clark, money order clerk in your office, from \$900 to \$1000 per annum, to take effect March 1, 1902.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon Copy.)

G

MR. COMAN: Exhibit 75, page 157.

*July 28, 1903.*

Postmaster, *Fredonia, N. Y.*

Sir:—I am in receipt of a report from a post office Inspector to the effect that Katherine K. Clark, Money Order Clerk, salary \$1000, is not needed in the post office, and that she was not needed at the time of her appointment. Accordingly you are directed to reduce Miss Clark to position of substitute clerk, to take effect August 1. Report this reduction on form A-45.

An allowance of \$100 per annum for cleaning is hereby authorized. This will enable you to employ a char-woman for mopping the work room floor and cleaning the windows twice a week.

As Maurice Hooker, carried on the rolls of your office as a laborer, \$400, has not performed service, the allowance for this position is hereby discontinued to take effect June 30, 1903.

Very respectfully,

*Acting First Assistant Postmaster-General.*

Note.—The following written in ink at bottom of letter: Carbon sent to Mr. Green, A. M. W., also a-10, 24, '02; and B. 69; E in pencil.

(Carbon Copy.)

G

MR. CARR: May I call the attention of Mr. Coman to the fact that when that letter was presented to the Judiciary Committee the only claim of its competency or propriety for the purpose of establishing a date. I ask if it is sought now to have any more effect given to the letter than was given before the Judiciary Committee? We are objecting to any report made by the Post Office inspector as that has not the slightest weight in this matter. I understood the counsel then and now to concur in that fact. I ask if I am correct in that respect?

MR. COMAN: The following procedure took place when the letter was introduced: "Mr. Carr: We don't object to any facts contained there. Mr. Fish: What you object to going in here is the opinion of the Inspector, I understand."

MR. COMAN: "We expressly disclaim we have any such intention."

MR. CARR: I made that suggestion because the members of this Joint Assembly do not know what took place at that time.

MR. COMAN: This letter was introduced for the purpose of establishing the date when Katherine Clark was reduced to a substitute clerk, and when the position of Maurice Hooker, as laborer, was discontinued.

MR. PRESIDENT: The Chair understands that is the only purpose for which it is introduced now.

MR. COMAN: Yes, sir, that is it, and not the opinion of the Inspector on any question.

MR. COMAN: Exhibit 76, page 158.

POSTOFFICE, *FREDONIA*, STATE, N. Y.,

*July 31, 1903.*

(Stamped.)

"Received Salary and Allowance  
Division, P. O. D., Aug. 3, 1903,  
No. 27551."

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of Section 419, Postal Laws and Regulations, *as amended Jan. 12, 1898*, I have the honor to report that on *July 31, 1903*, *Katherine K. Clark* was separated from the position of *money order clerk*, salary \$1000, in this office, *reduced to sub-clerk*. Salary paid to and including *July 31, 1903*.

To fill the vacancy I recommend the following changes in the clerical force of this office.

*MELVIN H. TAYLOR*,  
Postmaster.

G.

MR. COMAN: Exhibit 77, page 159.

*August 11, 1903.*

POSTMASTER, *Fredonia*, N. Y.

Sir:—I beg to acknowledge receipt of your communication of the 31st ultimo, reporting the reduction of *Katherine K. Clark* from money order clerk at \$1000 to substitute clerk, and in reply to advise you that the same is hereby approved, to take effect August 1, 1903.

Very respectfully,

*First Assistant Postmaster-General.*

(Carbon copy.)

Ex. 77, Mar. 21, '05.

MR. COMAN: Exhibit 78, page 159.

UNITED STATES POST OFFICE.

FREDONIA, CHAUTAUQUA COUNTY, STATE OF NEW YORK,

January 11, 1902.

HON. GEORGE W. BEAVERS, *Salary and Allowance Clerk, Washington, D. C.*

Dear Sir:—I would respectfully ask the appointment here of a laborer in the Post office at Fredonia, to commence from January 1st of this year, and I would recommend for that place Maurice Hooker. I hope his compensation can be fixed at at least \$400 per annum.

Thanking you in advance, I am

Very respectfully yours,

(Signed) MELVIN H. TAYLOR, P. M.

(Stamped.)

"Received, Salary and Allowance Div. P. O. D. Jan. 13, 1902, 18085."

Ex. 78, Mar. 21, '05.

MR. COMAN: Exhibit 79, page 160.

"SUPREME COURT OF NEW YORK."

FREDONIA, N. Y., Jan. 11, 1902.

(In pencil) Sawyer.

Personal.

HON. GEORGE W. BEAVERS, *Post Office Department, Washington, D. C.*

Dear Beavers:—I beg to enclose you herewith a letter from Mr. Taylor, the Postmaster here, requesting the appointment of a laborer in the Fredonia office. I hope it can be made as he asks it.

Thanking you in advance, I am,

Very sincerely yours,

(Signed)

WARREN B. HOOKER.

MR. COMAN: Exhibit 80, page 160.

January 15, 1902.

Hon. W. B. HOOKER, *Fredonia, N. Y.*

Dear sir:—I have the honor to advise you that, in compliance with your recommendation of the 11th instant, the Postmaster at Fredonia, N. Y., has been authorized to appoint Maurice Hooker as laborer in his office at a salary of \$400 per annum, to take effect as soon as he reports the appointment to this office.

Very respectfully,

*General Superintendent.*

(Carbon copy.)

Ex. 80, Mar. 21, '05.

MR. COMAN: Exhibit No. 81, page 161.

January 15, 1902.

POSTMASTER, *Fredonia, N. Y.*

Sir:—In compliance with your request of the 11th instant, you are hereby authorized to appoint Maurice Hooker as laborer in your office at a salary of \$400 per annum.

Please report the appointment on form A-45.

Very respectfully,

*Acting First Assistant Postmaster-General.*

(Carbon copy.)

G

Ex. 81, Mar. 21, '05.

MR. COMAN: Exhibit No. 82, page 161.

Form A-45.

POST OFFICE, *FREDONIA, STATE, N. Y.*

January 1, 1902.

(Stamped)

*"Received Salary and Allowance  
Division, P. O. D., Jan. 18, 1902,  
No. 21470."*

First Assistant Postmaster-General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of Section 419 Postal

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Laws and Regulations, *as amended Jan. 12, 1898*, I have the honor to report that on....., 189.., .....was separated from the position of....., salary \$....., in this office by..... Salary paid to and including ....., 189..

To fill the vacancy I recommend the following changes in the clerical force of this office.

(Signed) . MELVIN H. TAYLOR,  
Postmaster.

Recommended to date from	Names.	Age.	Present designation.	Nature of change.	Proposed designation.	SALARIES Proposed
January 1, 1902	Maurice Hooker	16	.....	.....	Laborer.....	\$400

Note.—The following appeared across face of letter in pencil:  
Approved Jan. 23, '02, and in ink, A—1, 22, '02.

Ex. 82, Mar. 21, '05—G. W. B.

MR. COMAN: Exhibit 83, page 163.

MR. COMAN: Mr. Carr, do you wish to read it?

MR. CARR: I will read it, yes, sir. On page 163.

(Stamped)

"Received Salary & Allowance Div. P. O. D. March 24, 1904.  
No. 140280."

#### FREDONIA POST OFFICE.

OFFICE OF THE POSTMASTER,  
FREDONIA, CHAUTAQUA Co., N. Y.,  
March 21, 1904.

HON. R. J. WYNNE, First Ass't Postmaster-General, Washington,  
D. C.

Sir:—To properly carry on the work of this office another clerk is needed, and I would recommend that Miss Katherine K. Clark be reinstated as clerk in the office.

Miss Clark is the substitute clerk at present, and she is perfectly competent to take charge of the Money Order and Registry business. She is the only one of the clerks who can make out the Money Order reports on the typewriter, and her services are very much needed in this office; regarding salary, I will leave that



entirely to you. Hoping this request will meet with your approval.

Very respectfully,  
(Signed) MELVIN H. TAYLOR,  
Postmaster.

Ex. 83, Mar. 21, '05.

MR. PRESIDENT: The Chair understands this exhibit was offered on behalf of the respondent.

MR. CARR: Yes, sir. The Assembly would infer that from the letter, I take it.

MR. COMAN: Exhibit No. 84, page 164.  
Form A-45.

(Stamped)

POSTOFFICE, FREDONIA STATE, N. Y.

January 6, 1900.

"Received salary and allowance  
Division, P. O. D., Jan. 8, 1900,  
No. 02791."

First Assistant Postmaster General,  
Salary and Allowance Division,  
Washington, D. C.

Sir:—In accordance with the provisions of Section 419, Postal Laws and Regulations, *as amended Jan. 12, 1898*, I have the honor to report that on *Nov. 9, 1899*, *Mary L. Moore* was separated from the position of *chief clerk*, salary \$1000, in this office by *resigning*. Salary paid to and including *Nov. 9, 1899*.

To fill the vacancy I recommend the following changes in the clerical force of this office.

MELVIN H. TAYLOR,  
Postmaster.

Recommended to date from Nov. 10	Names. Chauncey D. Sessions	Age. 22	Present designation.	Nature of change.	Proposed designation.	SALARIES.	
						Present.	Proposed
						App'd	Chief Clerk \$1000.

Note.—The following appeared across face of blank in pencil:  
O. K.—Jan. 10, 1900—112 & 126, and in ink A—1, 9, 1900.

Ex. 84, Mar. 21, 1905.

MR. CARR: Mr. President and Gentlemen of the Assembly: May I be permitted to inquire if there is anything in the matters pending here with reference to Chauncey D. Sessions? If so, we wish to interpose an objection to any further exhibits with reference to him. If there is anything claimed with reference to him I fail to find it in the resolution adopted by the Senate and Assembly.

MR. COMAN: I have no intention of offering any further exhibits with reference to Mr. Sessions. There were some others offered before the Judiciary Committee. His name will appear in certain transactions; I wish to show his appointment; I simply offer this for the purpose of fixing the date of the appointment.

MR. CARR: We have no objection to it, for the purpose of fixing that date. We do object to further evidence in regard to Mr. Sessions.

MR. BRACKETT: Where it is desired only to fix a date suggested by a letter, I think it would save time and not incur the record if our friends could agree on the date and take a concession, instead of bringing in a letter.

MR. CARR: We cannot agree upon a date unless somebody asks us to agree.

MR. COMAN: I omit from the reading Exhibits 86, 87, 88, 89 and 90. I offer to read now the following stipulation on page 169.

MR. CARR: You omit to read Exhibit No. 85.

MR. COMAN: From 85 to 90 inclusive.

MR. COMAN: I offer the following stipulation on page 169.

MR. CARR: Stipulated, that George W. Beavers was appointed Chief of Salaries and Allowance Division in August, 1897, and served as such until March 24, 1903, when he resigned. During his term of office the title was changed to "Superintendent of Salaries and Allowances Division"; again to "General

Superintendent of Salaries and Allowances Division," without any change in the powers or duties of the office.

MR. CARR: That concession is made the same as it was made before the Assembly Judiciary Committee. I asked Mr. Coman that the statement appearing on page 169 previous to that stipulation be read here because that becomes of value in determining some of the evidence that has already been read, and that which will come in later. As to the time when the Burlington office was classified, the Fort Plain office was classified, and Fredonia office was classified.

MR. COMAN: It is conceded that the Burlington office was classified July 1, 1881; the Fort Plain postoffice, February 1, 1900; the Fredonia office April 1, 1899, and the Dunkirk office September 1, 1887.

MR. COMAN: I read now from the oral evidence of Arthur R. Moore, page 170.

MR. CARR: Will it not facilitate that, if you read the questions and one of us read the answers?

MR. COMAN: I think perhaps until 1 o'clock I will go on.

MR. CARR: We are perfectly willing to do that.

MR. COMAN: We will consider that.

MR. BRACKETT: I suggest in that event one person read the answers. It would make it more realistic and be heard better.

MR. CARR: That is the reason I made the proposition, to have the one reading the answers take the witness chair and read the answers. We are entirely willing to do our share in doing that.

MR. COMAN: I will now offer to read the oral testimony of Arthur R. Moore found on page 170. I will read<sup>6</sup> the questions, and my associate, Mr. Stevens, will read the answers.

MR. BRACKETT: I ask, in reading the oral testimony, if it is by the consent of counsel on both sides, with the same force

and effect as though the witness was actually present, giving oral testimony before this body?

MR. PRESIDENT: The Chair so understands it.

MR. BRACKETT: If that is so, I suggest that an oral stipulation be entered in regard to that fact.

MR. PRESIDENT: Does the respondent agree?

MR. CARR: Yes, sir; reserving the right to raise such objections as they may wish in regard to the competency and admissibility of the testimony.

MR. BRACKETT: The same as if the witness were present.

MR. CARR: Yes, sir.

MR. BRACKETT: And this to apply to all the testimony that shall be read of the witnesses.

MR. CARR: We are entirely willing to put it in that form. We make the general consent, but reserve the right to object in order that it may not be said we have waived our right to raise the objection, if we saw fit to do so.

MR. COMAN: I suggest that when we come to cross-examination that they will read both the questions and answers, perhaps it would be better.

ARTHUR B. MOORE, called by Mr. Coman, and being duly sworn, testifies:

Examined by Mr. COMAN:

Q. Mr. Moore, where do you live? A. Fredonia, N. Y.

Q. And what is your profession? A. Attorney-at-law.

Q. At one time were you postmaster at Fredonia, N. Y.? A. I was.

Q. From what period of time? A. From April, 1895, until November, 1899, if I recollect right.

Q. Could you give us the date in November, Mr. Moore? A. My recollection is the 9th.

Q. And at the expiration of your term on the 9th day of November, 1889, who succeeded you in office as postmaster? A. Melvin H. Taylor.

Q. Do you remember the occasion when Frank P. Ball was appointed laborer in the Fredonia postoffice? A. Yes, sir.

Q. When was the subject of Frank P. Ball's appointment first brought to your attention? A. About the time that it was made, I can't recall the date.

Q. Well, let me refresh your recollection. He was appointed, was he not, about the 11th day of October, 1898? A. Yes, sir, probably, I don't know.

Q. You would think it was in the month of October anyway? A. I think it was about that time.

Q. And who first called the matter to your attention? A. Either a letter from the Department or else a reference to the matter by Judge Hooker, which occurred about that same time.

Q. They both occurred, both occurred about the same time? Have you the letter which you received from the department? A. No, sir, I have not.

Q. Is it a letter, a copy of which has been introduced in evidence here in your hearing, directing you to make the appointment of Mr. Ball? A. My recollection is that is a correct copy.

Q. And about the same time, do I understand you, you had a conversation with Justice Hooker upon the subject? A. Yes, sir.

Q. Where was that conversation; where did it take place? A. At Fredonia.     ●

Q. Whereabouts in Fredonia, Mr. Moore? A. I don't recall, but probably at the postoffice; I won't say.

Q. Will you give the committee that conversation? A. I cannot with any particularity; substantially it was that he wished to do something for Frank Ball and thought that he could get him appointed to a position in the office at Fredonia. That was substantially it.     ●

Q. Down to that time, and down to the time of Ball's appointment, had you ever requested the department to furnish you with any additional help in the office? A. No, sir.

Q. Had you ever requested the department to appoint a laborer to the Fredonia postoffice? A. I had not.

Q. You may state what services of that nature of a laborer as the term is commonly understood, there were performed in the Fredonia postoffice, Mr. Moore, about the month of October—well, during the year 1898? A. General sweeping and dusting of the office, occasionally mopping out and cleaning windows.

Q. And was the lobby of the postoffice taken care of by the janitor of the building in which it was kept? A. Yes, sir.

Q. Are you prepared, Mr. Moore, to say how much the expense of this labor had been down to that time? A. About from four to six dollars a month, not to exceed that. I don't think it was so much as that; I think sometimes only four to six dollars a quarter.

Q. It appears, Mr. Moore, that in the month of January, 1899, the designation of Mr. Ball, in your office, was changed from that of laborer to that of general utility clerk? A. Yes, sir.

Q. Was that charge made at your request? A. No, sir.

Q. How long did Mr. Ball continue upon the pay rolls of your office? Until the expiration of your term, did he not? A. Yes, from the time of his appointment to the expiration of my term.

Q. November, 1899, being a little upwards of one year? A. Yes, sir.

Q. And during that time did you pay to him his salary? A. Yes, sir.

Q. At the rate of how much per annum? A. \$600, if I recollect.

Q. In monthly payments? A. That I don't recall.

Q. Have you your checks with you? A. Yes, the stubs.

Q. Will you refer to these, please, and give us the dates and amounts of the payments made to Mr. Ball? (Witness produces check book.)

Q. I will ask you a question, Mr. Moore, with reference to your check book. The checks which you gave to Mr. Ball in payment for his services are where, Mr. Moore? A. They were

delivered to postoffice inspectors that were looking this matter up at Fredonia.

Q. At what time were they delivered to them? A. When this investigation was first commenced.

Q. In or about the year 1903? A. Yes.

Q. And have you ever seen them since, since you delivered them to the inspectors? A. I don't think so, unless you had them at the hotel.

Q. No. At the time when those checks were made by you, did you make memoranda of their date and amount and to whom they were payable? A. Yes, sir, on the stubs in the check book.

Q. And those memoranda are correct, are they? A. Yes, sir.

Q. From them you can give us the amount of the checks which you gave to Ball? A. Yes, sir.

Q. Will you proceed to do so? A. November, 1898, a check was drawn to F. P. Ball for October, 1898, salary, 20 days at a dollar sixty-four, \$32.80.

Q. Yes. A. January 4, 1899, check to F. P. Ball, for December, 1899, salary, \$50.

Q. Won't you look and see if you didn't draw one December 1st? A. I overlooked that, yes. December 1, 1898, order of F. P. Ball, November, 1898, salary, \$50. February 1, 1899, order of F. P. Ball, for January, 1899, salary, less 73 cents, overpaid last quarter, 31 days, at \$1.64 per day, \$50.11. March 2, 1899, order of Frank P. Ball for February, 1899, salary, \$45.90. July 1, 1899, order of Frank P. Ball, for March, April, May and June, 1899, salary, \$203.25.

THE WITNESS: October 9th, 1899, order of Frank P. Ball for one quarter's salary ending September 30, 1899, \$150. November 10th, 1899, order of Frank P. Ball, for balance salary to November 9th, 1899, \$65.21.

MR. STANCHFIELD: Those amounts go to represent deductions that were made for work in the office? Why do you have fractions, did you abstract the amounts that was paid outside for work there, from his salary?

**THE WITNESS:** The payments were made by the day, regulated so by the department, so some quarters would run a few days more than another.

**Q.** Now, Mr. Moore, during the time when you were postmaster, from the 11th day of October, 1898, until the 9th day of November, 1899, did Frank P. Ball ever perform any services in the postoffice at Fredonia? **A.** No, sir.

**Q.** Mr. Moore, in what building was the postoffice at Fredonia situated during your term of office? **A.** In the Village hall, public hall of the village.

**Q.** Was the office of Justice Hooker in the same building? **A.** Yes, sir.

**Q.** During the whole of the time? **A.** Yes, sir.

**Q.** During all of the time of Mr. Taylor's incumbency in the office of postmaster were the same conditions existing, the postoffice was in the same building and Justice Hooker's office was in the same building? **A.** Yes, sir.

**Q.** In passing from the street to Justice Hooker's office did he necessarily pass through the lobby which was also the lobby of the postoffice? **A.** The outside lobby?

**Q.** Yes. In other words, persons entering the postoffice from the street or Justice Hooker's office from the street would enter through the same entrance, pass through the same lobby? **A.** Not necessarily, there are two entrances.

**MR. FISH:** Well, the committee would like to know whether this was Justice Hooker's private office or became his court chambers?

**Q.** What was the fact, Mr. Moore, as to whether Justice Hooker had chambers in this building? **A.** It was his private office, until he was appointed to the Supreme Court bench when he still maintained the same office.

**Q.** Did he use it as chambers? **A.** Yes, sir.

**Q.** For the transaction of the public business? **A.** Yes.

**Q.** Now, if I am wrong about it, state exactly what the situation is with reference to the lobby and the entrance to the postoffice and Justice Hooker's office, Mr. Moore? **A.** You could get



from one street into Justice Hooker's office without passing through the general lobby of the postoffice, and you could get past to his office from another street, through the general lobby and still on to his office.

Q. Is the building on a corner? A. Yes, sir.

A. And is it prominently located in the central part of the city? A. Yes, sir.

Q. How large a village is Fredonia, Mr. Moore? A. 4600.

Q. How large was it in 1898? A. I should judge 44 to 4600.

Q. You remember when the Fredonia office was classified? A. Yes, sir.

Q. At what date? A. I think in April, 1899.

Q. When did free delivery go into effect? A. At that time.

Q. Now, Mr. Moore, you were appointed by President Cleveland? A. Yes, sir.

Q. And you were and are a democrat? A. Yes, sir.

Q. I would like to ask you what were the politics of Frank P. Ball in 1898? A. Why, he had at some time prior to that, been generally known as a democrat; as to what he was at just that year, I am unable to say.

Q. You, Mr. Moore, were somewhat active in politics, were you not, in these years? A. Yes, sir; locally.

Q. You knew the political conditions in Fredonia well, didn't you? A. Fairly well, yes, sir.

Q. Did you know Mr. Ball as a democrat or a republican?

Q. Go on Mr. Moore, and say whether you knew Ball as a democrat or republican? A. I can't change that answer, what time he changed his politics, he was known in different political parties. I say I knew him at that time I think, prior to 1898, generally as a democrat.

Q. How many clerks and what clerks, were employed in the Fredonia postoffice, actually employed there, from October, 1898 to October 1st, 1899? A. Why, I would have to refer to some memoranda.

Q. Have you any such memoranda with you? A. I think the stubs of the checks will show.

By MR. COMAN:

Q. Now in January, 1899, some additions were made to the clerical force in your office? A. Yes, sir.

Q. What were the names of those appointed?

(Witness refers to book.)

Q. Well I may ask you if there were Henry J. Pemberton, George Cooper, Minerva Jeffrey, Ora Cadwell, and Thomas O'Neil. A. I received such a letter from the department as you read.

Q. Notifying you that these people had been appointed a clerkship in your office, did you? A. Yes, sir.

Q. How many of these reported for duty in your office? Well I will waive that question. Did Minerva Jeffrey ever report for duty in your office? A. No, sir.

Q. Did you pay her salary during a certain period of time? A. Yes, sir.

Q. By checks? A. Yes, sir.

Q. Will you give the amounts and dates of the checks which you paid Minerva Jeffreys, A. (referring to book) Feb. 1, 1899, order of Minerva Jeffrey, to Jan. 1899, salary, commencing Jan. 15th, 17 days, \$27.90.

THE WITNESS (referring to book: March 2, 1899, order of Minerva Jeffrey to Feb., 1899, 28 days, at \$1.64, \$45.90.

April 1, 1889, order Minerva Jeffrey, from March, 1899, salary 31 days, at \$1.64, \$50.85.

May 1, 1899, order Minerva Jeffrey, for April, 1899, salary 30 days, at \$1.64, \$49.20.

June 1, 1899, order Minerva Jeffrey, for salary for May, 1899, 31 days, at \$1.64, \$50.84.

June 10, 1899, order Minerva Jeffrey, for balance one quarter ending March 31, 1899, \$2.01.

June 16, 1899, order Minerva Jeffrey, for June, 1899, salary, transferred June 15th, balance of quarter, \$24.96.

Q. Did you ever see Minerva Jeffreys? A. No, sir, not that I know of.

Q. And she was never at the Fredonia postoffice and never performed any service there? A. Not to my knowledge.

Q. How did you come to pay Minerva Jeffrey for services which she never performed in the Fredonia postoffice, Mr. Moore? A. I was directed by the department to pay her salary.

Q. Have you any communications from the department directing you to pay her salary? A. I have not, preserved.

Q. Did you receive any communication? A. Yes, sir.

Q. From the department? A. Yes, sir.

Q. By whom were they signed? A. From the regular Salary and Allowance Department.

Q. Beavers? A. Yes, sir, or the First Assistant Postmaster-General.

Q. Did anybody else ever suggest to you that you should pay Minerva Jeffrey her salary? A. No, sir.

Q. Were you directed in these communications where to send her checks? A. Yes, sir.

Q. Whereabouts? A. Somewhere in Washington; I don't recall the particular location.

Q. The rules of the office required, did they not, that each employee should sign the pay-rolls? A. Yes, sir.

Q. Were the pay-rolls sent to Washington in order to obtain her signature? A. Yes, sir.

Q. What became of those checks that you drew to the order of Minerva Jeffrey? A. They were forwarded as directed by the department. ●

Q. To the department? A. Yes, sir.

MR. GRADY: That date of April 1, 1889, on page 179, is evidently a mistake; it should be 1899.

MR. COMAN: Yes sir.

Q. And they are not in your custody? A. No, sir. They were included in the checks delivered over to the postoffice inspector.

Q. Well, we will pass from Minerva Jeffrey. Henry J. Pemberton was another of the clerks appointed at the same date, was he not? A. Yes, sir.

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Q. Who was Henry J. Pemberton? A. He is a resident of the village of Fredonia.

Q. And was he at that time? A. Yes, sir.

Q. What is his business? A. I don't think he is performing any business.

Q. Did he ever report for duty at your office? A. No, sir.

Q. Or ever perform any service? A. No, sir.

Q. Never receive any pay? A. No, sir.

Q. Do you know whether he was ever notified that he had been appointed or designated? A. I don't know.

Q. Who is George Cooper? A. I don't know him.

Q. Do you know that there is such a man a resident of Chautauqua county? A. I think there is locally, such a man, or——

Q. Where do you understand his residence to be? A. Why, possibly Laona near Fredonia; I don't know.

Q. George Cooper never appeared? A. No, sir.

Q. To report for duty in your office, and he never was paid any salary? A. No.

Q. Thomas O'Neil, who is he? A. He is now a mail carrier at Fredonia postoffice.

Q. At that time what was his business.

Q. At the time of his appointment, January, 1899? A. Why, he was a general all around laborer.

Q. By whom employed? A. That I don't know; by a good many, I think.

Q. Thomas O'Neil? A. For aught I know; I don't know anything to the contrary.

Q. Then you don't know where he was employed, nor by whom, do I understand you? A. Why no, I don't know that he was employed by any one particularly.

Q. Not regularly? A. No, sir.

Q. Why were not Pemberton and Cooper paid for their time as well as Ball and Jeffrey? A. I don't think they ever reported for work, and my recollection is that the department in withdrawing them from the roll specified that they were not to be paid. I don't recall anything further about it.

THE PRESIDENT: The Joint Assembly will stand in recess until 2:30 o'clock and will reconvene promptly at 2:30.

At the hour of 1 o'clock the President and the Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate stand in recess until 2.25 p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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#### TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The hour of 2.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber.

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#### JOINT SESSION—ASSEMBLY CHAMBER.

MR. PRESIDENT: You may proceed, Mr. Coman.

MR. COMAN: Page 181 (reading). Q. Can you tell me when O'Neill commenced to work in the Fredonia postoffice, etc., down to the words "Q. Did not apply there, we did not expect it would apply, did we," on page 182, Mr. Carr? That was objected to and waived.

MR. COMAN: Waived.

Q. Can you tell me when O'Neil commenced work in the Fredonia postoffice? A. Yes, he commenced regularly when the Free Delivery went into operation, there in 1899 I think; but he performed other services in the postoffice before that time.

Q. What services? A. Well, we were then locating the routes for the mail-carriers and having the mail boxes erected around the village and he assisted me in that work.

Q. During what time and upon what days did he assist you in this work of locating the Free Delivery route? A. Between January, 1899, and April, 1899, from time to time.

Q. How long did that work occupy you and Mr. O'Neil; how many days? A. Well, I don't know.

Q. Well, what is your best recollection and judgment about it?  
A. Why a number of weeks.

Q. Do you mean by that that it took you a number of weeks being occupied each day of the week? A. No, sir.

Q. How many days altogether were you and O'Neil occupied in that work? A. I don't know. I should judge fifteen or twenty days.

Q. What was the nature of that work? A. Well, these boxes had to be delivered around the village and be erected on some permanent posts.

Q. And how many of these boxes were there? A. I don't recollect now.

Q. Who put up those boxes? A. Mr. Frank Johnson was one who assisted and Mr. O'Neil was another.

Q. Who was Frank Johnson? A. He was a general laborer around the village at that time.

Q. How much did you pay Johnson for putting up the boxes? A. (referring to the book) \$23.98 seems to be the check drawn to him on April 20th.

Q. You spoke about laying out the routes? What did O'Neil do with reference to laying out the routes? A. Well, I had some maps made, I think, and also we took the village map which embraced all the streets and it was some trouble to locate these different routes for the different carriers so that they would not retrace their steps on the different streets and it would be equally divided between the carriers, and Mr. O'Neil assisted in that work.

Q. Do you know what else O'Neil was doing down to the first of April besides helping you? A. No, sir, I do not.

Q. He was not working regularly in the postoffice, was he, Mr. Moore? A. I don't know that he was.

Q. You know that he was not, don't you? A. No, I do not. I think that he often reported there for work, but as to how often I don't know.

Q. Do you know when he first reported there for work, what date? A. No, sir.

Q. Do you know what date it was with reference to his appointment which you received from Washington, how long after that?

A. I couldn't state with certainty.

Q. Could you state approximately? A. Two or three weeks, I guess.

Q. You paid Mr. O'Neil for his services from the date of his appointment, January 17th? Did you not? A. Yes, sir.

Q. When did you pay him for his services, from January 17th to the 1st of April? A. (Witness referring to book) I drew the check on May 13, 1899.

Q. For what amount? A. \$124.65.

Q. That was to cover the salary for January, February and March? A. From January 15th to March 31st.

Q. Now when did you pay O'Neil for his April salary? A. (Referring to book) May 1st, 1899. Thomas O'Neil, April, 1899, salary, \$49.20.

Q. Why did you pay O'Neil for the work which he performed in April, 13 days before you paid him for that which he performed in January, February and March?

MR. COMAN: Now I offer these two checks in evidence as exhibits 91 and 92. They are printed in the record. I offer the copies contained in the record.

MR. CARR: Whereabouts are they in the record?

MR. PRESIDENT: If you have no objection and they do not appear you may proceed.

MR. COMAN: I pointed out, Mr. Carr, and if they are not here then I will withdraw my offer.

Now may I read a statement which follows. I think that is the only place where the check appears. There is a description. The check appears to have been paid June 3, 1899, etc.

MR. CARR: Mr. Coman, is it correct that is the numbers of the numbers of these exhibits? That was the correct number of the exhibits before the Assembly Judiciary Committee, but there are some of these exhibits that have not been put in.

MR. COMAN: Yes,—well why not preserve the same numbers as in the records here?

MR. CARR: Well I call attention to it so that the members of this body will not get confused about it.

MR. COMAN: Yes, of course.

MR. CARR: If you wish to preserve the numbers here why then they will understand about it.

MR. STEVENS: (Who is reading answers from the witness stand.) Now I suggest that you call attention to the fact that the word "repeated" means that this word was in figures and in words.

MR. PRESIDENT: The number of the exhibits will be the number given in the printed record.

MR. COMAN: The word "repeated," Mr. President, occurring in the description of each of these checks means of course that the amount was written in figures and also written out in words.

MR. COMAN: (Continuing reading from words "or a Cadwell was one of the persons included," etc., down to the words "Mr. Coman, I offer that check in evidence with the indorsement and notations upon it," on page 184.

MR. COMAN: The check is Exhibit 93.

"A. R. Moore, postmaster, No. 172; Fredonia, N. Y., May 13, 1899. Pay to the order of Ora Cadwell \$124.65, repeated, A. R. Moore, P. M., to the Fredonia National Bank, Fredonia, N. Y. Indorsed Ora Cadwell. Pay June 5, 1899. Paid one-quarter salary ending June 30, 1899."

MR. STEVENS: Mr. Coman, I call attention to the fact that "June 30" is obviously a misprint, ending "June 30." That is at the end of check. It is the quarter ending March 31.

MR. COMAN: We will verify that later, Mr. Stevens.

MR. STEVENS: I think they will concede that is obvious, because the next one shows it.

Q. These are the two checks that I refer to, are they not, Mr. Moore (showing witness checks)? A. Yes, sir.



By MR. COMAN:

Q. When did you deliver that check to O'Neil, the Exhibit 91 (showing witness check)? A. Why I assume on the day that it was drawn; I have no recollection about it.

MR. COMAN: The check appears to have been paid June 3, 1899, A. R. Moore, Postmaster, April 17th, Fredonia, N. Y., May 13th, 1899, pay to the order of Thomas O'Neil \$124.65, repeated A. R. Moore P. M. to the Fredonia National Bank, Fredonia, N. Y.; stamped Fredonia National Bank; paid June 3, 1899, Fredonia, N. Y.

The Exhibit 92 reads as follows: "A. R. Moore, Postmaster, No. 167, Fredonia, N. Y., May 1, 1899; pay to the order of Thomas O'Neil, \$49.20, repeated, A. R. Moore, Postmaster to Fredonia National Bank, Fredonia, N. Y. Paid May 1st, the day of its date."

No endorsements except Thomas O'Neil; that is endorsed to each of them; no further endorsements.

Q. Ora Cadwell was one of the persons included in this appointment, was he not, Mr. Moore? A. Yes, sir.

Q. I think I asked you if you had requested the appointment of any of those persons? A. No, sir.

Q. Or of any—— A. Not that I can——I have no recollection.

Q. Or of any person to those positions, Mr. Moore? A. Not that I can recall.

Q. Where did Ora Cadwell live at the time of his appointment?

A. At Fredonia.

Q. Where was he working at that time? A. I can't state.

Q. When did Ora Cadwell first report for duty in your office? A. I can't recall the date. It was in the spring sometime if I recall right; spring or summer of 1899, I don't recall when he came to it.

Q. I understand you then that he performed no service until some time late in the spring or early summer, Mr. Moore? A. That is my recollection.

Q. From what date did you pay Caldwell for his services? A. From January 15th, the date of his appointment.

Q. Why did you do that Mr. Moore; at whose suggestion or request if anybody? A. I don't recall any particular suggestion except that the department cancelled the appointment of Pemberton and Cooper and left it open that those others were to be paid.

Q. That Cadwell and Jeffrey were to be paid? A. Yes, sir.

Q. And that was the only suggestion that was made to you by any person as to the payment to Cadwell of his salary during this period? A. That is all that I can recall.

Q. You knew that Caldwell was employed elsewhere did you not, during January, February, March and April? A. No, sir, I did not.

Q. You knew that he was not at the postoffice? A. Yes, sir.

Q. And was not reporting there? A. Yes, sir.

Q. Didn't you know that he was employed in the Dunkirk Locomotive Works? A. No, I didn't know that.

Q. Now you paid Mr. Cadwell for his salary down to the first of April at the same time that you paid O'Neil did you not? A. Yes, I think so.

Q. That is you gave him a check under the same date; May 13th; is that the check? A. (Examining check) Yes; \$124.65.

MR. COMAN: I offer that check in evidence with the endorsements and notations upon it.

Check marked Exhibit No. 93.

Q. That was the Cadwell salary? A. Yes, sir.

MR. COMAN: That must have been for the quarter ending April 1st, I assume gentlemen.

MR. CARR: I take it that is so and I think that probably better be corrected so as to read that way.

MR. COMAN: April 30 instead of June 30.

MR. CARR: No, March 31.

MR. COMAN: March 31, yes.

Q. Is this the check that you gave Cadwell to pay his salary for the quarter ending June 30th? A. Yes, sir.

MR. COMAN: I offer that in evidence. Dated July 1st, 1899. Pay to the order of Ora Cadwell \$150.00, A. R. Moore, P. M., to the Fredonia National Bank; endorsed Ora Cadwell. Paid July 6, 1899."

Check marked Exhibit No. 94.

Q. I show you check dated June 10, 1899, for \$2.01 payable to the order of Ora Cadwell. What was that for Mr. Moore? A. That was a part of the prior quarter salary which had been computed incorrectly.

Q. To correct an error then?

MR. COMAN: That check is offered in evidence and is exhibit No. 95.

By MR. COMAN:

Q. Now Mr. Moore, I call your attention to Exhibit No. 17, (indicating) That is substantially a copy as you remember it of the direction to you to appoint these people in the postoffice. I am calling attention to exhibit No. 17 of May 8, 1899. Did you receive a communication from the Postoffice department of which this is a copy or substantially a copy? A. Yes, sir, that is my recollection.

Q. Did you ever receive any other order or direction, from the postoffice department with reference to paying those clerks Minerva Jeffrey or Ora Cadwell? A. Nothing that I can recall except the original order directing their appointment and placing them on the roll at a stated salary.

Q. Do you remember when Mixer went to Buffalo? A. Can you tell me the date?

Q. We suppose the date of this transfer was July 1st? A. Well that was correct I think.

Q. Did Cadwell ever perform any service in the postoffice at all after Mixer left.

MR. COMAN: That should be "before" evidently, Gentleman.

MR. CARR: I take it so.

Q. Do you recollect whether he did or not? A. I can't recall. He did not for a number of months after his first appointment but as to just the time I can't state.

Q. How often did you used to see Ball during the period after his appointment before your term of office expired? A. Why possibly two or three times a month; I wouldn't want to state oftener than that.

Q. Where were you accustomed to meeting him or seeing him? A. On the streets or in the street cars in Dunkirk—

Q. See him at Dunkirk? A. Why I can't state that I did with-in that time.

Q. Well could you say whether or not you were in his place of business at Dunkirk during that time? A. Why I probably was.

Q. What was his business in Dunkirk? A. I think he was conducting a ticket broker's office.

Q. And during substantially all the time, Mr. Moore, from his appointment to the expiration of your term? A. Why I have no very distinct recollection about it; I think so though.

Q. Where did you pay Ball; where did you give him his checks; come to the office for them? A. I think usually he came to the office.

Q. Now Mr. Moore where was Ball's office in Dunkirk located? A. On Lion street, near the Lake Shore depot.

Q. How near? A. Not further than across the street, in a slanting direction, perhaps two or three hundred feet.

By MR. SCHOENECK:

Q. Is that near the postoffice? A. No, sir.

By MR. COMAN:

Q. Did Ball have a sign in front of his place of business, giving his name and business? A. I think so; yes, sir.

Q. And you have seen that and observed it there as you were passing along the streets, have you? A. Yes, sir.

By MR. COMAN:

Q. Mr. Moore, did I ask you yesterday where the checks were which you gave to Ball and others? A. Yes, sir.

Q. Employees in the office; and did you reply that they were with the department at Washington? A. They were given to the postoffice inspectors when they came to look this matter up.

Q. Who notified Ora Cadwell that he had been appointed a clerk in your office? A. I don't recall; I think probably I did.

Q. Can you tell us when you notified him of his appointment? A. I won't state positively that I did; it was probably about the time that I received the notification.

Q. Who notified Thomas O'Neil that he had been appointed a clerk in your office? A. I answer the same, I probably did.

Q. Have you any recollection? A. No, sir.

Q. Of notifying either of them? A. No, sir.

Q. Simply a matter of reasoning with you then? A. Yes.

Q. At the time of the appointment of the five persons as clerks in your office on or about the 17th day of January, 1899, what clerks were then actually employed in your office? A. Mary L. Moore, chief clerk—

Q. Charles H. Landers? A. Yes, sir, Edwin W. Easton and Edwin D. Mixer.

Q. That is all? A. I think that is all.

Q. What was the duties of each of those clerks?

A. Well, they performed general duties in the office; they were designated on the roster differently but they performed general duties.

Q. Was there any necessity for the appointment of five additional clerks or any other number of additional clerks on the 17th day of January, 1899?

Q. Were these four clerks that you have named performing all of the necessary work in the Fredonia postoffice at that time? A. Just at that time I think so.

Q. You say "Just at that time;" had there been any time when they were not performing all of the work necessary to be done in the office? A. No, sir, not prior to that.

Q. How many clerks, Mr. Moore, did you have in your office after the time when the free delivery was installed down to the expiration of your term? A. These four clerks with the addition of Caldwell.

Q. Was Caldwell a clerk after the free delivery? A. Yes, sir.

Q. Didn't he take Mixer's place? A. He came in the spring or in the summer, I can't say that he took Mixer's place.

Q. Well, Mixer left the service in your office about what date? A. I think June first or July first.

Q. And after Mixer left, you had only four clerks there, did you? A. I don't recall now.

Q. Well, was anybody appointed to take Mixer's place unless it was Caldwell? A. No, sir.

Q. So that your clerical force was not increased any, was it, after the free delivery system went into operation? A. Not by any order of the department, as I say.

Q. Was it actually increased in numbers, your clerical force? A. Not after Mixer went out.

Q. You may state whether in fact the work of the clerical force in your office was increased or diminished after the free delivery went into effect,—the amount of work for the clerical force to perform? A. Yes, sir, it was much increased.

Q. Increased? A. Yes, sir.

Q. You may state in what way? A. Well, the mail had to be sorted for the different carriers' desks, and that I think included the principal part.

Q. Didn't the carriers sort their own mail? A. No, I don't think so.

Q. Are you sure about that, sir? A. No, I am not; they may have assisted.

MR. CARR: Cross examination of Mr. Moore.

(Mr. Carr read the questions and Mr. Stanchfield the answers, as follows:)

“Q. Mr. Moore, how long had you been a resident of Fredonia at the time of your appointment as postmaster? A. Oh, twenty-five or thirty years.

"Q. And over that quarter of a century your occupation had been what? A. Attorney-at-law most of the time.

Q. And down until the time of your appointment as post-master, were you engaged in the active practice of your profession? A. Yes, sir.

Q. All over that section of the State? A. Yes.

Q. How long have you known Judge Hooker? A. I think twenty or twenty-five years.

Q. And over that period of time had he likewise been a resident of Fredonia? A. Yes, sir, largely over that time.

Q. What will you say as to whether or no, from 1890 to 1900, Fredonia was a growing village? A. Yes, it was increasing.

Q. I mean by that, was it increasing in population? A. Yes, sir.

Q. Now, you told us yesterday that you were appointed post-master, I think my memory serves me correctly, in 1895? A. That is correct.

Q. You were appointed under the administration of President Cleveland? A. Yes, sir.

Q. Were you a Democrat? A. Yes, sir.

Q. Had you been quite actively interested in Democratic politics for some years in Chautauqua county? A. Yes.

Q. And did you have and do you now enjoy a large personal acquaintance all through Chautauqua county? A. Yes, sir.

Q. In every town and village in the county? A. Yes.

Q. Now, do you know prior to 1898, whether or no Judge Hooker had represented that district in Congress? A. He had, I think.

Q. What congressional district was it? A. Thirty-fourth, is it?

Q. And it embraces what counties? A. It embraces Chautauqua, Cattaraugus and I think Allegany.

Q. For how many years before the fall of 1898 had Judge Hooker represented that district in Congress? A. I won't state positively, two years or four years, perhaps.

Q. Hadn't it been six? A. Possibly.

Q. Well, at any rate, two or three terms? A. Yes, sir.

Q. And in Congress you knew that he was chairman of the committee on rivers and harbors? A. Yes, sir.

Q. One of the most important committees in Congress? A. Yes, sir.

Q. Now, did people in that congressional district who were desirous of obtaining places under the Federal administration whether in the postal or other departments, consult Judge Hooker with reference to obtaining those appointments? A. Yes, sir, very largely, I think.

Q. And are you aware of the fact that he was somewhat scrupulously careful to aid his constituency in the requests they made along those lines? A. Yes, sir, I think exceptionally so.

Q. I take it, in that congressional district, as well as others, there were many veterans of the different wars who were interested in applications for pensions? A. Yes, sir.

Q. And all people of that class applied to Judge Hooker for help? A. Yes, sir.

Q. Now, your home, I infer, from what you stated, was in the village of Fredonia? A. Yes, sir.

Q. It was at that time and is now a village? A. Yes.

Q. And was Judge Hooker's home there also? A. Yes.

Q. Now, coming down to this postoffice building, is it located upon a corner? A. Yes, sir.

Q. And upon the corner, Mr. Moore, of what streets? A. Church and Temple streets.

Q. Now, it was exactly upon a corner? A. Yes.

Q. Was there an entrance in the front of the building? A. Yes.

Q. Was there also an entrance around the corner and upon the side of the building? A. Yes.

Q. The side of the building laid along and upon what street? A. Temple street.

Q. And it faced upon Church street? A. Yes.

Q. Now, the postoffice proper was located upon what floor of that building? A. On the first floor.

Q. You stated to Mr. Coman yesterday that the offices of Judge Hooker for a period prior to 1898 and ever since had been



in the same building; on what floor were his offices located? A. On the second floor.

Q. Now, you stated that you knew where Judge Hooker lived? A. Yes.

Q. In coming from his house to his office, would it be nearer for him to go into this side entrance upon Temple street than it would be to enter from the front entrance upon Church? A. Yes, I think it would; it was the most traveled street.

Q. And from the direction in which he lived, wouldn't it be nearer? A. Yes, I think it would.

Q. So that for him to enter the front entrance of the post-office would require him to walk the distance from the side entrance to the end of the building and turn the corner to go in? A. No, not necessarily; he could come on a back street.

Q. Well, a back street, but it would be the ordinary and more convenient method for him,—we will put it that way then? A. Yes.

Q. Now, was there a flight of stairs from this side entrance that runs up into the office of Judge Hooker? A. Yes, sir.

Q. There would be no way when he was passing in and out in which he would be able to take visual notice of just the particular men that were at work in the postoffice? A. No.

Q. Now, did he have clerks in his employ? A. Yes, sir.

Q. Isn't it a fact that during your incumbency of the postoffice at Fredonia, that Judge Hooker's clerks were in the habit of getting his mail? A. Yes, I think so.

Q. Now Judge Hooker during the period with reference to which you have been interrogated, running from October, 1898, up to the fall of 1899, and indeed for years before that, was a great majority of his time away from Fredonia, was he not? A. Yes, sir.

Q. He was always in attendance upon the sessions of Congress? A. Yes.

Q. Now, you recall, Mr. Moore, when Judge Hooker was appointed a justice of the Supreme Court. I think the date would be conceded the 10th of November, 1898.

WITNESS: I think that is correct.

MR. CARR: Mr. Coman admits that, "Mr. Coman : Yes." It is also conceded, Mr. Coman, at the time, or just preceding that time, that is, November 10, 1898, he was serving as a member of Congress?

MR. COMAN: Yes.

MR. CARR (continuing) : .

By MR. STANCHFIELD :

Q. He was appointed a Justice of the Supreme Court on the 10th day of November, 1898, Mr. Moore? A. Yes, sir.

Q. Now, until that date you know that he had been your representative in Congress? A. Yes, sir.

Q. And let me ask you, to refresh your recollection, if he had not been continuously serving in that capacity from 1890? A. That is my recollection.

Q. Now, when he was appointed a Judge of the Supreme Court you know the fact that he resigned his congressional seat? A. Yes, sir.

MR. CARR: And resigned, Mr. Coman, that appears here, his congressional seat upon the same date, the 10th day of November, 1898, that is taken as a fact?

MR. COMAN: Yes.

MR. CARR: (Continuing) :

Q. Had Judge Hooker, Mr. Moore, in the election just a few days before that, I mean before his appointment as a Justice of the Supreme Court, been re-elected still again as the representative in Congress from that district? A. Yes, sir.

Q. Now, after his resignation as a member of Congress and his appointment to the position of Justice of the Supreme Court of this State, did you have any representative in Congress in that district until the following year? A. No, sir.

Q. Until the following election in November, 1899? A. No, sir.

Q. That is right, is it? A. Yes, sir.

Q. I mean by that, that you had no special election to elect a member of Congress to take his place? A. No.

Q. And any one who had business with the departments at Washington, had no representative to whom they could apply unless they relied upon Judge Hooker, I believe? A. No, sir; not in that district.

Q. I mean in that congressional district. Now do you remember as a matter of fact that he was nominated for Justice of the Supreme Court in the fall of 1899? A. Yes, sir.

Q. And was elected a Justice of the Supreme Court in November, 1899? A. Yes.

Q. Taking his place as an elected member of the judiciary on the first day of January, 1900? A. Yes, sir.

Q. During the time that you acted as postmaster, about how many hours a day, Mr. Moore, would you say that you were at the office, engaged in the performance of the duties and functions of the office? A. Ordinarily not to exceed two hours a day.

Q. Something like two hours a day? A. Except when the monthly and quarterly reports were made and then I gave more time.

Q. I assume by that answer that if any special exigency arose requiring your attendance there you devoted such time as was necessary to its accomplishment? A. Certainly.

Q. But ordinarily you did not spend over two hours a day in the postoffice? A. No, sir.

Q. Now for the year or two preceding January 1st, 1900, when Judge Hooker became an elected member of the judiciary, how often would you say that you then saw him in and about the village of Fredonia, as often as once a month? A. I couldn't say that I saw him more frequently than that.

Q. Only then upon rare intervals? A. When he was at home, yes.

Q. Now there came a time, did there not, Mr. Moore, when it was brought to your notice, or attention, in some way that the postoffice at Fredonia was to pass into what is known as the classified service? A. Yes, sir; I had received notification from the department.

Q. About what time did you receive that notice? A. I think the latter part of January, or early in February, 1899.

Q. Your understanding and knowledge of the rule is and was, I take it, from your experience that clerks who were upon the roster of the postoffice, when it passed into the classified service, were eligible to place without passing a civil service examination? A. Yes, sir.

Q. And appointees of the postal department who were upon the roster of an unclassified office and remained there at the time when it became classified, were eligible to transfer to any post-office in the United States without passing the civil service? A. I so understood it.

Q. And employees of a non or unclassified office upon the roster of that office at the time of its classification were eligible to place? A. Yes, sir.

Q. Without passing a civil service examination? A. Yes, sir.

Q. All those matters were familiar to you as they are to post-masters generally throughout the United States? A. Yes; I was reasonably familiar with it.

Q. Now I think you testified yesterday in response to an inquiry from Mr. Coman, that there came a time when you had a brief conversation with Judge Hooker with reference to the appointment of Mr. Ball? A. Yes, sir.

Q. In which, as you stated the conversation, Judge Hooker made the remark that he would like to help Mr. Ball and that he was intending to try to secure him some place in your office? A. Yes; or on the rolls of that office.

Q. Or on the rolls of that office. That conversation took place, I think you stated, in October, 1898? A. About the time Ball was appointed.

Q. I think the evidence disclosed yesterday that that was on the 11th of October; the record evidence disclosed yesterday that that was upon the 11th of October, 1898?

Q. So that this little talk you had with Judge Hooker antedated Ball's appointment? A. Yes; not to exceed a few days, however, I don't think.

Q. Well, as to the length of time I don't care particularly; simply that it was before the time the appointment took place.

Now did you ever, Mr. Moore, have any other or different conversation with Judge Hooker upon the subject of Ball's appointment or his relation to or connection with that office, or work that he did or he did not do at that time, or afterwards? A. Nothing whatever that I can recall.

Q. In other words you had but this one talk with Judge Hooker upon that subject? A. That is my recollection.

Q. And you have stated the phraseology of it as near as your memory will permit? A. As near as I can recall it.

Q. Was there any suggestions in any way emanating from Judge Hooker to you that Mr. Ball, under this appointment was not to render any services to the United States government? A. Nothing whatever.

Q. Or was there any suggestion or intimation to you from Judge Hooker that Mr. Ball was to be appointed to that place without rendering any service in the place, in order that the salary that he was to receive might be used in any way, or for any particular purpose? A. No, sir.

Q. Any talk along those lines of any sort or description? A. Nothing whatever.

Q. Now you tell us, Mr. Moore, that you have been an active lawyer for many years; you received here directions from the department at Washington to put Frank P. Ball upon your roster? A. Yes, sir.

Q. And you obeyed those instructions? A. I did.

Q. And the direction that came to you from Washington also fixed the salary that you were to pay? A. Yes, sir.

Q. You didn't feel that it was incumbent upon you, or that the duty devolved upon you to inquire of the United States Government why they had directed you to put this man upon the roll? A. No, sir; there was no criticism of the postoffice department at that time, whatever.

Q. And when you were directed to put him upon the roll and his salary was fixed, both as a lawyer and the postmaster you knew that your duty was to pay him? A. I so considered it.

Q. And you did pay him? A. Yes, sir.

Q. Now there came, later in point of time and along in the spring of 1899, directions for you to place other names upon your roster? A. Yes.

Q. Henry J. Pemberton? A. That was in January, 1899.

Q. Henry J. Pemberton was one? A. Yes, sir.

Q. George Cooper was another? A. Yes.

Q. Ora Caldwell was another? A. Yes.

Q. And Thomas O'Neil was another? A. Yes.

Q. And Minerva Jeffrey was another? A. Yes, sir.

Q. Making five in all? A. Yes, sir.

Q. Now, I understand you yesterday that you never had seen Minerva Jeffrey? A. I never have that I know of.

Q. You had explicit instructions from the postoffice department at Washington to put her upon your roll? A. Yes, sir.

Q. And her salary was fixed? A. Yes.

Q. And you paid her in accordance with orders that you received from your superiors? A. Yes, sir.

Q. Did you follow the same course with reference to Caldwell and O'Neil? A. Yes, sir.

Q. You did, as it appears from the record evidence, receive directions from your superiors at Washington to the effect that you should not pay Henry J. Pemberton and George Cooper? A. Yes, sir.

Q. Did you follow out these instructions? A. Yes, sir.

Q. And you paid them nothing? A. Nothing.

Q. Mr. Moore, you live in what judicial district of the State, the eighth? A. The eighth judicial district.

Q. It embraces, follow me please, the following counties: Erie, Chautauqua, Cattaraugus, Niagara, Orleans, Genesee, Wyoming and Allegany? A. That is correct.

Q. And after the appointment of Judge Hooker as Justice of the Supreme Court, by designation and practice, did he hold terms of court, both trial terms at law, where there were juries, and terms in equity, where there were not juries in the various counties in that judicial district? A. Yes, sir; in each county.

Q. Now that takes in, of course, that district, the city of Buffalo? A. Yes, sir.

Q. You have there an immense volume of legal business? A. Yes.

Q. And Buffalo is a city approximating four hundred thousand people? A. Yes, sir.

Q. Now from that judicial district Justice Hatch was upon the appellate division of the city of New York? A. Yes, sir.

Q. Justice Woodward was upon the appellate division in the city of Brooklyn? A. Yes, sir.

Q. Justice Laughlin was upon the appellate division in the city of New York? A. Yes.

Q. And Justice Spring was upon the appellate division that sat in Rochester? A. Yes, sir.

Q. So that the elimination of all those judges from that territory forced upon the shoulders of Judge Hooker, you know as a lawyer, more work than otherwise would be left to him to perform? A. Yes, sir.

Q. And didn't that fact, that situation rather, necessitate the presence of Judge Hooker for a considerable portion of his time in the city of Buffalo in order to attend to the business arising there? A. Yes, sir.

Q. Now for the performance of all the judicial business of that district, were there left any other judges than these that I name, to wit: Childs, Kenefick, White, Lambert and Kruse? A. I think that included all that were left.

Q. And from time to time did one or the other of those five left for that immense territory, with that great volume of business, occasionally sit, under designation, in New York? A. Yes, sir.

Q. Is it a fact that in the city of Buffalo, Mr. Moore, that always from September until July there is a continuous session of two trial terms presided over by justices of the Supreme Court in the city of Buffalo? A. Yes, sir.

Q. Where a jury is in attendance? A. Yes, sir.

Q. And a great preponderance of the same period of time there

is also in session an equity term necessitating the presence of a justice of the Supreme Court? A. Yes, sir; and a special term.

Q. Now are there also in addition criminal terms presided over by justices of the Supreme Court at varying intervals in the city of Buffalo? A. Yes, sir.

Q. Now, in addition to that, is there almost continuously from September until July, in session in the city of Buffalo, a special term, for the argument of motions and to whom one may go for orders ex parte? A. Yes, sir.

Q. And which is presided over by still another justice than the one who presided at what I have denominated the ordinary equity term? A. Yes, sir.

Q. Now what is the county seat of Chautauqua county? A. Mayville.

Q. And is Mayville the place at which terms of court are held in Chautauqua county? A. Yes, sir.

Q. That is distant how far from Fredonia? A. 25 miles.

Q. Reached in what way? A. By train from Dunkirk and electric car from Fredonia to Dunkirk.

Q. And in going to and from Fredonia to Mayville it would consume practically a day, wouldn't it; that is if you had any business there? A. Yes, sir.

Q. And terms of court of such descriptions as a Justice of the Supreme Court would be expected and would be compelled to hold, occur at Mayville? A. Yes, sir.

Q. Whenever Judge Hooker was engaged in holding a term of court, it would of necessity be either at Mayville, 25 miles from his home, or else in some one of the other localities included in your judicial district? A. Yes, sir.

Mr. Coman read the questions and Mr. Stevens the answers from Mr. Moore's redirect examination, as follows:

Q. Do you know anything about the actual time which the justices of the eighth judicial district are sitting in court during the year, the number of weeks they are actually employed? A. Except for the summer vacation they are employed most of the time.



Q. Do you know that from your personal knowledge or is it matter of hearsay with you? A. Well, partly from personal knowledge.

Q. Do you know whether the actual time which the justices of the eighth district sit in court exceeds thirty-two weeks per annum, or not? A. No, I do not.

Q. Do you remember the civil service examination which took place in March for the free delivery service, at Fredonia? A. Yes, sir.

Q. Do you know who took that examination? A. I recall some of the names.

Q. Will you give the names please? A. Lamphear and—why the three present carriers at Fredonia; I don't recall their names.

Q. What are their names? A. I can't recall their names.

Q. The three present carriers all took the civil service? A. Three of the present carriers.

Q. Three present carriers? A. Yes.

Q. How many carriers are there? A. I think there are four now.

Q. And one of them is Thomas O'Neil? A. Yes, sir.

Q. He did not take the civil service? A. No.

Q. Do you know whether any others took the civil service except those that you have named? A. There were others.

Q. And were there others who successfully passed the examination? A. I think so.

Q. Can you recall the names of any of them? A. No, sir.

Q. I understood you to say, in answer to Mr. Stanchfield's question, that you received directions from the department at Washington not to pay Pemberton and Cooper? A. That is my recollection, yes; to take them off the rolls.

Q. But that was in May, wasn't it? A. I think so.

Q. And the only direction which you ever received on that subject is contained in the letter of May 8, 1899, which is exhibit 17, wasn't it, to which I called your attention yesterday? A. That is all I recall now.

Q. Now I'd like you, Mr. Moore, to look at the copy of your communication to the postoffice department under date of October 12, 1898, exhibit No. 2, and see if you recall whether that is an accurate, or substantially an accurate copy of the communication that you sent to the department; what would be your recollection, Mr. Moore? A. I judge that is a correct copy.

Q. And you struck out a portion of the printed form, did you not? A. Yes, sir.

Q. And in the place of it inserted "as directed in your letter of the 11th inst."? A. Yes, sir.

Q. "I recommend the following changes"? A. Yes, sir.

Q. The same thing is also true with reference to your recommendation for the appointment of O'Neil, Pemberton, Cooper, Jeffery and Caldwell; and didn't you strike out the bulk of the printed form and insert "As instructed in your letter of the 12th instant I recommended the following changes"? A. Yes, sir.

Q. I suppose, Mr. Moore, that you have very little actual knowledge as to how much of the time Justice Hooker was in Fredonia during the period from October, 1898, or from November, 1898, to the end of your term; you made no inquiry about it, did you? A. No.

Q. And you occasionally met him upon the street? A. Yes, sir.

Q. As you had before that, in years before? A. Not as frequently.

Q. Not as frequently? A. No.

Q. Was not Justice Hooker in Fredonia more frequently than when he was in Congress? A. Yes, I think he was; I will correct that; that year.

Q. Now just one more question. How long, to your knowledge, had the postoffice been in the village building at Fredonia? A. My recollection is from about 1890.

Q. How long to your knowledge had Justice Hooker's office been in the same building? A. About the same time.

Mr. Carr then read the questions and Mr. Stanchfield the answers from the re-cross examination of Mr. Moore, as follows:

**RE-CROSS EXAMINATION by MR. STANCHFIELD:**

Q. Your predecessor as postmaster at Fredonia was whom? A. Was Mr. Barker, Will Barker.

Q. He was a republican? A. Yes, sir.

Q. And a political associate and friend of Judge Hooker? A. Yes, sir.

Q. Was he removed by Mr. Cleveland upon charges? A. I think so.

Q. And you were put in his place? A. Yes, sir.

Q. Taking the place of the friend of Judge Hooker? A. Yes.

Q. Now isn't it a fact that the appointment of Thomas O'Neil by the department rendered it possible for him to become a mail carrier without passing the civil service, before your office went upon the classified list? A. I judge so; I wouldn't state positively."

MR. COMAN: Go ahead, Mr. Carr, with Mr. Cahn.

MR. CARR: This is Mr. Cahn, a member of the committee.

By MR. CAHN:

Q. Mr. Moore, did Judge Hooker hold special term at Fredonia at all? A. Nothing unless some adjourned term from one of the other counties.

Q. No. chambers work, at all, special term? A. Yes; occasionally chamber work.

Q. Well, did he do that at the offices which he maintained in the postoffice building? A. Yes, sir.

Q. Do you know what Miss Jeffrey's Washington address was? A. I can't recall now.

Q. Have you any records showing to what address you mailed the payroll? A. No, I think not; I have none now.

By MR. STANCHFIELD:

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Q. Mr. Moore, how did you know that Judge Hooker held special term in his office in the postoffice building? A. I have been there when this special term was in session.

Q. In his office? A. Yes, sir; certain motions were there before him.

By MR. FISH:

Q. They couldn't bring on a contested motion except by consent? A. No, sir.

By MR. CAHN:

Q. These payrolls for Miss Jeffrey, do you recall whether they were sent to Miss Jeffrey or not? A. I think that they were sent to the postoffice department at Washington by instructions.

Q. Addressed to any particular person there? A. Well to the Salary and Allowance Division.

Q. Do you know the name of the head of that department at that time? A. Yes; George W. Beavers.

MR. COMAN then read the questions and Mr. Stevens the answers from Mr. Moore's redirect-examination, as follows:

Q. I show you, Mr. Moore, what purports to be the payroll of the Fredonia postoffice for the period ending December 31, 1899; is that the payroll and are those the signatures of the employees, Mr. Frank P. Ball, Ora Caldwell, Edwin W. Easton, Charles H. Landers and Chauncey D. Sessions? A. That roll was signed after the term of my office expired.

Q. That is true. Do you know where the payrolls are, during your term of office? A. They were filed in the office, or copies of them were filed in the office.

Q. Well, duplicates, weren't they? A. Yes, duplicates were filed.

Q. Have you ever seen them since you left the office? A. No, sir.

Q. And the last you saw of them they were in the office. A. Yes.

Q. And you left them there at the expiration of your term of office? A. Yes.

By MR. WEMPLE:

Q. Mr. Moore, you say that Judge Hooker was in Fredonia more after he was judge than while he was congressman? A. I think somewhat more frequently; he could usually get home to spend Saturday and Sunday while he was holding court in the judicial district.

Q. Well during the time he was in Congress, or during vacation time of Congress, he was home all the time wasn't he? A. Well, a good share of the time.

Q. Was he in the active practice of law during that time that he was home? A. Yes; when he was in Congress.

Q. Well, he resigned as Congressman, you say, November 10, 1898? A. Yes, sir.

Q. And from that time until March, 1900, there was no representative in Congress from your district? A. No.

Q. Well, he was elected November, 1899, but he didn't take office until March, 1900? A. Yes, that is correct.

Q. So there was an interim of about fifteen or sixteen months there was no representative from your district? A. Yes, sir.

MR. COMAN: Shall I read that one question of yours, Mr. Stanchfield?

MR. STANCHFIELD: Yes, if you like. Well it isn't a question, is it?

MR. CARR: No, simply a statement.

MR. COMAN: I will read that, if you have no objection.

MR. STANCHFIELD: No objection at all.

MR. COMAN: (continuing)

MR. STANCHFIELD: Mr. Wemple let me get that straight. I understand that Mr. Congressman Vreeland, the present incumbent, was elected in November, 1899, and really by a special congressional election, and took his place the following December.

MR. FISH: Elected to fill vacancy.

MR. CARR: Practically there was a year that there was no representative in Congress.

By MR. WEMPLE:

Q. Then there was no representative in that district that had anything to do with the postoffice matters there during that interval? A. Yes, sir; I so understand it.

By MR. COMAN:

Q. Now, Mr. Moore, a single further question: You had your employees in the postoffice sign the regular pay rolls such as have been exhibited to you here? A. Yes, sir.

Q. They were signed in duplicate? A. Yes, sir.

Q. One was forwarded to Washington and one was retained by you? A. Yes.

Q. And where they in the form which I now show you, on page 325 of the Bar Association report?

MR. STANCHFIELD: That in under the administration of Taylor.

MR. COMAN: I know, but I am asking him if that was in the form of the rolls; it appears that the rolls, Mr. Clark, tells me they can't find them.

THE WITNESS: I presume that it is the same.

By MR. COMAN:

Q. Well, have you any doubt about it, Mr. Moore, that the form was substantially at least, the same as this? A. I think the forms were changed from time to time, but I cannot say but what I think in all probability that is the form used during my administration.

Q. And the forms which were used by you stated the time from which services were performed and the dates to which services were performed, did they not? A. It stated the period for which the clerks signed the payroll.

Q. Well, did it state that, or did it state the period for which they performed services? A. Well, I don't recall just that it read that they performed services.

Q. Did it not recite, as stated in this copy which I have shown you "services from" then following the date, "performed to," another date? A. Well, my recollection is that it read "in full for services for the quarter ending" such a date.

Q. Well, but that was at the top, wasn't it, and not in the schedule part? A. Yes; that is at the top.

Q. Now did the schedule show the date from which and to which services were performed by each employee? A. I can't state; I think that that form has been changed since I was postmaster.

Q. Do you know it has been changed in that particular? A. Yes, sir.

Q. What do you think it stated on the subject of the date from and to which the charges were made? A. Now I am only stating on the vaguest recollection.

Q. Well, give us your best recollection? A. As I say, in the heading, my recollection is that it read that we receive from the postmaster the sums set opposite our respective names in full for services performed during the quarter ending such a date.

Q. Do you think that the word "performed" after "services" was omitted? A. I think so.

Q. And any other changes that occur to you with respect to the question of services having been performed? A. No, sir.

Q. Mr. Moore, some time in the fall of 1903, was there a demand made upon you by the United States Government for the repayment of the moneys which you had paid to Frank P. Ball and Minerva Jeffrey? A. Yes, sir.

Q. And you refused to repay it? A. Yes, sir.

Q. And you never have repaid any part of that money to the government? A. I never have, any part of it.

MR. CARR: Now read from page 237, Mr. Coman, where Moore took the stand. We might as well finish his examination right in this connection. ●

MR. COMAN: Very well.

Mr. Coman then read the questions and Mr. Stevens the answers of Arthur R. Moore, recalled, appearing on page 237 of the testimony taken before the Assembly judiciary committee, as follows:

ARTHUR R. MOORE, recalled.

By MR. COMAN:

Q. Mr. Moore, I understand that you desire to make a correction or an explanation as to a portion of your testimony; you may state what it is, what the correction you desire to make it.

A. Yes, sir; with the permission of the Chairman, I read the evidence given yesterday afternoon. I find there that I stated that I did not recall any other direction in reference to the appointments and payment of these five checks, except that letter from the Department taking Pemberton and Cooper off the roll. I recall now that at the time or soon after when it was time to make out the quarterly statements I did write to the Department in reference to whether Pemberton and Cooper should be paid or not, and received a reply that they were not to be paid, and they were not paid in consequence, and were not put on the roll.

Q. And that you say was a distinct communication from the letter of May 8th? A. Yes, sir, I think that my letter was after that letter was received for instructions in reference to that.

Q. The letter which you received from the Department you have not in your possession? A. I have not; I left the papers and correspondence on file there.

Q. In the postoffice? A. Yes, and I assume that the inspectors perhaps took them.

THOMAS O'NEIL, called by counsel for committee, being sworn, testified:

Direct examination (Mr. Coman read the questions and Mr. Stevens the answers, as follows):



## DIRECT EXAMINATION by MR. COMAN:

Q. Mr. O'Neil, where do you live? A. Fredonia.

Q. What is your age? A. 37.

Q. What is your present occupation? A. Mail carrier.

Q. A mail carrier at Fredonia postoffice? A. Yes.

Q. How long have you been engaged in that service? A. Why it will be six years in April, the first of April, or about the first of April.

Q. Six years the first of April? A. About the first of April.

Q. Prior to that time what was your occupation? A. I worked for Judge Hooker.

Q. For how long a period of time? A. I think eight years, I am not positive about that.

Q. In what capacity? A. Why, I worked around his place.

Q. And what was the nature of your work for Justice Hooker? A. Why I worked about his place; done various things.

Q. Doing what sort of work? A. Why, taking care of his lawn, garden, horses.

Q. Acted as coachman? A. Yes, sir.

Q. Sort of general utility man? A. Yes.

Q. Then you were about 23 years of age, were you, when you entered Justice Hooker's employ? A. Yes, sir; just about that, I should think.

Q. Prior to that time what had been your occupation? A. Why, I had worked for Dr. Waterhouse, at the same kind of work.

Q. For how long? A. Four years.

Q. Well, in short, Mr. O'Neil, had you been all of your life since you commenced to work, engaged in the same kind and character of work that you have described? A. Pretty nearly so; I worked in a factory part of the time.

Q. Had you ever done any office work? A. No, sir.

Q. Any clerical work of any description? A. Not that I recall.

Q. When did you leave school, at what age? A. I don't remember.

Q. Could you tell us about? A. No, hard work to tell.

Q. Well, you never had any business education, or any education in any school or any business college, or school, had you?

A. No, sir; I never went to a business college.

Q. You did attend the common schools? A. Attended the Normal school at Fredonia.

Q. When was the subject of your appointment to the Fredonia postoffice first mentioned to you? A. Well, I don't know, sometime in the winter I think of 1899.

Q. Winter of 1898 and 1899? A. Yes; I think so; that is my recollection of it now, Mr. Coman.

Q. Could you be any more definite than that as to the date? A. No, sir; I couldn't.

Q. Who mentioned it to you? A. Judge Hooker.

Q. Where did the conversation take place, at Judge Hooker's home? A. I think so, I don't remember distinctly.

Q. Do you remember what was said between you and Judge Hooker? A. No, I don't; no, sir.

Q. Who mentioned the subject, you or Judge Hooker? A. I did.

Q. What did you say to Judge Hooker? A. Why I understood that they were going to have free delivery service there and I asked him if he couldn't help me to a place up there.

Q. In the free delivery service? A. Yes, sir.

Q. And what did the Judge say? A. He said he would see.

Q. And that was all that you recall of that conversation? A. Yes, sir; that is all.

Q. When did the subject next come up, between you and the Judge? A. Never came up again between I and the Judge.

Q. You never had any further conversation with him on that subject? A. No, sir.

Q. From that time to this? A. Not that I recall.

Q. Are you a man of family, Mr. O'Neil? A. Yes, sir.

Q. And where did you live during the time when you were in Judge Hooker's employ, during the latter part of it? A. Why I lived with my father then.

Q. You lived with your father? A. Yes, sir; I wasn't married at that time.

Q. You were not married at that time? A. No, sir.

Q. You have been married since you went into the postal service? A. Yes, sir.

Q. You didn't live at Judge Hooker's then? A. No, sir.

Q. You lived with your father? A. Yes, sir.

Q. How long did you continue to work for Judge Hooker in the manner which you have described?

Q. I mean down to what date? A. Well, sir; I couldn't tell you exactly; it was sometime in the early Spring of 1899.

Q. Down to the first of April, do you think? A. No, sir; I don't think so.

Q. Give us, as nearly as you can, the date when you think you left Judge Hooker's employ? A. Well, my recollection of it is, it is sometime in February of that year; have no record of it or anything.

Q. Are you at all positive about the date Mr. O'Neil? A. No, sir; I am not.

Q. Might it have been in the month of March? A. Possibly, but I don't think it was.

Q. When did you commence working in the postoffice? A. Well, I couldn't give you the dates of that either.

Q. How long before the first of April? A. Why, I don't know.

Q. Did you commence work as a carrier, April 1st? A. No, sir; not exactly on the first.

Q. When did you commence work as a carrier? A. I don't know; we were all carried over for a few days on some account.

Q. About how many days? A. Why, I think a week or something like that.

Q. Well, soon after the first of April you commenced delivering mail as a carrier, did you? A. Yes, sir.

Q. And have continued ever since? A. Yes, sir. ●

Q. What services did you perform in the postoffice before you commenced working as a carrier? A. I used to help Mr. Moore, the postmaster, anything he asked me to do.

Q. Well, now, what did he ask you to do? A. Well, I went out with the fellow that was putting up the mail boxes; he sent me over different routes in the village to find out how long it took to cover them and divide them up amongst the three carriers.

Q. Anything else? A. No, not that I recall now.

Q. How much of your time did that take? A. Why, I don't know; I haven't any recollection of it.

Q. Could you tell the committee approximately, anywhere near how much time it took? A. I couldn't; some days we didn't work at all and then some days we worked.

Q. Did you work a week at that work? A. I think more than that.

Q. Did you work ten days at it? A. I don't know.

Q. You say you think you worked more than a week; give us a period of time which you think would cover it, would two weeks? A. Why, I think so, two weeks.

Q. Would that be about your judgment? A. Yes, sir; it might be more and it might be less; I wouldn't say.

Q. And during that time you were engaged in helping lay out the routes and put up the boxes? A. Yes, sir.

Q. How many boxes were there? A. I don't know.

Q. Well, have you any idea? A. Why, 25 or 30 perhaps.

Q. Do you think there were as many as that? A. I think so.

Q. How long did it take you to put up a box? A. Why it would depend on where it was a good deal.

Q. Well, after you got to the point where it was to be put up, how much time would it take? A. Why perhaps it would take a half an hour and sometimes more, where you had to set a post for them; if there was a post it wouldn't take so long.

Q. And on or about the first day of May you received a check for your services for the month of April, didn't you? A. Why, I presume so; I don't remember it distinctly.

Q. Will you look at exhibit 92 and say whether that is the check which you received for your April services (handing paper to witness)? A. Yes, sir; I think it is; that is my signature.

Q. That was the first payment you received for any services in the Fredonia postoffice, wasn't it? A. Yes, sir.

Q. And you collected it the same day, did you not, May first? A. That is the way it was stamped there.

Q. Was anything said at that time about your receiving pay for services before April first? A. I spoke to Mr. Moore about it before that.

Q. When? A. Well, before; sometime in April.

Q. What did you say to Mr. Moore about it in April? A. Why I asked him what about my wages for the time before the first of April.

Q. Did you mention any length of time? A. No, sir.

Q. What did Mr. Moore say? A. I don't remember what he said.

Q. Do you remember the substance of it? A. No, I don't.

Q. Did he say anything? A. Why I don't know whether he did or not.

Q. Did he indicate in any way whether he was going to pay you anything or not for your services before the first of April? A. No, sir.

Q. Did you speak to him more than once before the first of April? A. I don't remember that I did.

Q. When next did you speak to him about it? A. I don't think I ever spoke to him again about it.

Q. I show you exhibit No. 91, when did you first see that paper (handing paper to witness)? A. It is dated the 13th day of May.

Q. Did you receive it on or about the 13th day of May? A. Why I must have, yes; it is paid June 3.

Q. You observe, do you not, that it was paid June 3? A. Yes, sir.

Q. Does that refresh your recollection any as to when you received it? A. It does not; no, sir.

Q. Do you think that you carried the check from May 13 to June 3, a period of 20 days? A. Why, I might have done it.

Q. Have you any recollection as to whether you did or not? A. No, sir, I haven't. I couldn't tell whether I did or not.

Q. Was there any conversation between you and Mr. Moore at the time that check was given to you? A. No, sir; not that I recall.

Q. Where was it handed to you? A. I don't know; I suppose in the postoffice.

Q. Have you any recollection as to where it was handed to you? A. No, sir; I haven't.

Q. And if there was any conversation you don't now remember it? A. No, sir; I do not.

Q. Now, Mr. O'Neil, in the spring of 1899, did Justice Hooker have horses at his——? A. Yes, sir.

Q. Who succeeded you in the employ of Justice Hooker in taking care of the horses? A. My father went there.

Q. Your father? A. Yes, sir.

Q. And he remained there how long? A. He didn't remain very long.

Q. And who succeeded your father? A. A man named Mr. Morrison, I think; I am not sure about it, whether it was Morrison or, I forget the other man's name.

Q. Do you remember when the civil service examination took place? A. Yes, sir.

Q. And that was in March, was it? A. I think so.

Q. Do you remember how long before that it was that you had this conversation with Judge Hooker? A. No, I do not.

Q. Do you remember whether you then had heard that there was to be a civil service examination? A. Yes, when?

Q. When you had this talk with Judge Hooker? A. No, sir; I didn't know that there was to be a civil service examination.

Q. You didn't know that there was to be a civil service examination? A. No, sir; I didn't know that there was to be a civil service examination.

Q. How had you learned that the free delivery service was to be installed there? A. Why, it was the talk about town.

Q. And had it been stated in the newspapers? A. I don't remember that it had, or that it had not; but it was the talk about town.

Q. But it was talked about town? A. Yes, sir.

Q. Had you done any work in mapping out routes, or putting up boxes before the civil service examination took place? A. I couldn't say. .

Cross-examination (Mr. Carr read the questions and Mr. Stanchfield the answers, as follows) :

Q. Mr. O'Neil, about how old are you? A. 37.

Q. When were you 37? A. 14th of February.

Q. February of this year? A. Yes, sir.

Q. And where were you born? A. In Fredonia.

Q. Have you been there all your lifetime? A. Practically, yes, sir, been away from there some.

Q. For how long a period have you ever been away? A. I don't think more than six months at a time, and that only but once.

Q. How many times have you been away from Fredonia for six months? A. Only once that I remember of.

Q. So virtually your entire lifetime has been passed in the village of Fredonia? A. Yes, sir.

Q. The Fredonia State Normal School is located there? A. Yes, sir.

Q. You attended that? A. Yes, sir.

Q. So that you have a fair, common school education? A. Well, I couldn't say about that; I have a good education, I guess.

Q. Well, I say a fair, common school education? A. Yes, sir.

Q. Now you never kept a diary, I take it? A. No, sir.

Q. Nor any books of any kind? A. No, sir.

Q. Are you able to give us a notion about how old you were while you were at the normal school; no one expects you to give the month or the day? A. I think somewhere about 16 or 17 years old; somewheres along there.

Q. When you stopped? A. Yes, sir.

Q. You were a poor boy? A. Yes, sir.

Q. Had to support yourself from that age? A. As quick as I was able to.

Q. And would you go to school certain portions of the year and work other portions? A. Yes, sir.

- Q. In order to keep yourself along? A. Yes.
- Q. Are your father and mother living? A. My mother is not living; my mother is dead.
- Q. Your father is still living? A. Yes, sir.
- Q. Now you are perfectly well able to read and write? A. Yes, sir.
- Q. Now, you say that for a period of something like eight years before you were appointed a mail carrier you were in the employ of Judge Hooker? A. Yes, sir.
- Q. By the year or by the month? A. By the month.
- Q. And your duties while in the employ of Judge Hooker were a man—a general utility man at his home? A. Yes, sir.
- Q. Is Judge Hooker a married man? A. Yes, sir.
- Q. Children? A. Yes, sir.
- Q. How many? A. Two.
- Q. Is his wife living? A. Yes, sir.
- Q. And were the two children and his wife occupying the house all the while you were in his employ? A. Practically all the time; they were away part of the time.
- Q. In addition to the outside work which you performed, taking care of his horses and looking after his lawn and his garden, did you have anything to do with the care of the house? A. Yes, sir.
- Q. What? A. Well, had to put down carpets and take them up, help the women folks. Do various things.
- Q. Whenever the strength of a man was required? A. Yes, sir.
- Q. You were called in to help? A. Yes, sir.
- Q. Did you help in taking care of the children of Judge Hooker? A. Yes, sir.
- Q. Were you with them quite often. A. Yes, sir.
- Q. And in what, generally speaking, what kind of a way? A. Why, the little girl and boy used to be around the lawn with me where I was working, and garden; stay with me.
- Q. You sort of helped pass the time with them, looking after them? A. Yes, sir.
- Q. Did you become very much attached to Mrs. Hooker and the children? A. Yes, sir.



Q. The Judge, I take it, was away a great deal? A. Yes, sir; quite a lot.

Q. He was and had been very nearly all the period you were in his employ a number of times? A. Yes, sir.

Q. And you were the only man around the premises? A. Yes, sir.

Q. Now, there came a time when you heard, through the medium of village gossip, that the Fredonia postoffice was to have attached to it a free delivery system? A. Yes, sir.

Q. I take it you were ambitious to better yourself? A. Yes, sir.

Q. You wanted to climb as high as you could? A. Yes, sir.

Q. And you, of your notion, asked Judge Hooker to help you get one of these places? A. Yes, sir.

Q. Now, had you talked with Mrs. Hooker or anyone else about it? A. Not that I remember of; might have.

Q. It was your own motion, just asked the Judge to help you get the place? A. Yes, sir.

Q. And his answer was that he would see? A. Yes, sir.

Q. That is all the talk you ever had with him upon the subject? A. That is all I ever remember of having.

Q. If you had had other talks with him you would be apt to remember it, wouldn't you? A. I think so.

Q. You state according to your best recollection that was the only conversation you had upon the subject? A. Yes, sir.

Q. You are sure about that? A. That that was the only conversation?

Q. Yes. A. No, I didn't say I was sure.

Q. I say you are sure you have exercised your best recollections? A. Yes, sir.

Q. And that is the only talk you can recall upon the subject? A. Yes, sir.

Q. Now, did you have—I take it from your answer you did not, but I had better ask you—you never had any talk with Judge Hooker, did you, as to the amount you were to be paid or when you were to be paid? A. No, sir.

Q. Or whether it was to be by check or in money? A. No, sir.

Q. No talk upon that subject? A. No, sir.

Q. Are you able to state with any definiteness, Mr. O'Neil, just when you received notice you had been appointed mail carrier?

A. It was some time in January.

Q. January of 1899? A. Yes, sir.

Q. And the free delivery system was put into use the following April? A. Yes, sir.

Q. Now, after you were appointed or received notice of your appointment in January, 1899, did you still continue to work for Judge Hooker? A. Not for any length of time; just a few days until they got straightened out a little.

Q. Who took your place? A. My father did.

Q. About how many days did you work for Judge Hooker before your father took your place? A. As I remember it, just two or three days.

Q. Just a sufficient length of time to enable him to find somebody else to take your place? A. Yes, sir.

Q. So as not to leave him without any man? A. Yes, sir.

Q. Now, after you left Judge Hooker, that two or three days, you never received any pay from Judge Hooker? A. No, sir.

Q. Now, after you got the notice in January, 1899, of your appointment, did you report to the postoffice for duty? A. Yes, sir.

Q. You reported there quite often, did you not? A. Yes, sir.

Q. And did you hold yourself subject to the postmaster as to anything he desired you to do? A. Yes, sir.

Q. Now, what did you do with reference to determining or finding out the number of inhabitants or the number of houses in the village of Fredonia, and the names of people that lived in them, so as to qualify yourself as a mail carrier? A. Why, the Department sent some slips to Fredonia to be one left at each house.

Q. What did you do with those slips? A. We had to take them and bring them up to the houses so people could put their names on, the ones that wanted their mail delivered at their homes, and then mail them back to the Department or postoffice.

Q. Did you have anything to do with the distribution of those slips? A. Yes, sir.

Q. All over the village? A. Yes, sir.

Q. So that in that way you became thoroughly acquainted with the names of the people who lived in every house in the village? A. Yes, sir.

Q. And you know them now, don't you? A. Yes, sir.

Q. So that as a mail carrier you are perfectly competent not only to read but to give the name of every resident in every house in the village? A. I think I could, pretty nearly so.

Q. Now, can you tell during what portion of the winter of 1899 you were engaged in this work, whatever it was, going around the village with those slips to ascertain what people wanted their mail delivered at their homes, can you tell me what portion of the months of that winter it was? A. No, sir; I could not.

Q. You understood you were to be paid by the month? A. Yes, sir.

Q. And there were no specific hours or days assigned to you until you became a regular carrier? A. No, sir.

Q. Just one question. You are still a mail carrier? A. Yes, sir.

Q. And in the years that have run since your appointment has your salary been increased? A. The first year, after we had served one year we were raised.

Q. Raised from \$600 to what? A. \$850; that is the regulation in this particular class of an office.

Q. And you have been regularly drawing that right along since? A. Yes, sir.

Q. And are to-day? A. No, not to-day, because I ain't working.

MR. CARR: Perhaps I ought to read the comment of counsel, that he hoped that the committee would take judicial notice that he was quick enough to pass the civil service.

Q. What I meant by that remark was that you are in the employ of the Government as a mail carrier at this time? A. Yes, sir.

Q. Has any fault ever been found with your service; have charges ever been presented against you? A. No, sir; not to the Department nor to the office where I work.

By MR. WEMPLE:

Q. Judge Hooker was away during most of the time you were employed there? A. Yes, sir.

Q. Was he away more while he was Congressman than while he was Judge? A. Well. I couldn't say as to that; I couldn't say. When he was in Congress he was away steady, when he was away. When he was Judge, why he would come home not to stay very long, but to stay over Sunday.

Q. While he was Judge he came home usually the latter part of the week? A. Not always. He came, yes, sir, when he was close by.

Q. He was home more on Sundays than he was any other time through the week? A. Yes, sir.

Q. Was the postoffice open on Sunday? A. One hour.

Q. Were the clerks employed there Sunday during that hour? A. Part of them; part of the clerks and part of the carriers. They have got it fixed so about half of them have every other Sunday.

By MR. CAHN:

Q. Did you see the Judge there at all on Saturday during the time he was Judge? A. Why, I don't know.

Q. Don't you know whether you ever saw him there on Saturday? A. Not that particular day, might have been.

Q. How were you paid by Judge Hooker during the time you were in his employ, check or by cash? A. Both ways.

Q. Not at the same time both? A. No; I was both ways at different times.

Q. Towards 1899 how were you paid by him, the latter part of your employment by Judge Hooker, were you paid by him by check or by cash, how is that? A. I just said some times he would pay me one way and some times another.

Q. Do you remember the last time you received pay from Judge Hooker whether that was by cash or by check? A. I don't.

Q. You state with the exception of the conversation which you had with Judge Hooker, in which you stated to him you desired to get in the postoffice, you never had any other conversation? A. Not that I remember now.

Q. Do you mean you left his employ and never told him what you were going to do? A. I meant by that never any more conversation in connection with the postoffice.

Q. When you left his employ did you tell him where you were going? A. Yes, sir.

Q. What you were going to do? A. Yes, sir.

Q. What was it you said? A. I told him I had been appointed to the postoffice.

Q. Did he say anything to that? A. I don't remember what he said; he must have said something.

Q. Did he say whether he was surprised at hearing it, anything like that? A. I don't remember what he said.

Q. Did you ever thank him for getting the appointment for you? A. I don't remember that I ever did.

Q. From whom did you receive notice of your appointment? A. The postmaster.

Q. Did you show that notice to Judge Hooker? A. No, sir.

Q. Now, Mr. O'Neil, when you received notice and two or three days afterwards you left Judge Hooker's employ, all you ever did, as I understand, was to go to him then and say, "I am going in the postoffice department," and he said never a word to you, is that correct? A. I don't say he done that; I said I don't remember what he said.

Q. Now, one other question. You delivered those slips to the various houses along the routes in the city of Fredonia? A. Yes, sir.

Q. Do you remember what time of the year that was you made the delivery? A. I said in the spring of 1899. I don't remember about the dates; I kept no track of them.

Q. This was for the purpose of ascertaining the names of those people who lived in the houses? A. Yes, sir.

Q. Didn't you know those names before you delivered the slips?

A. Part of them I did.

Q. Those slips were sent for the purpose of ascertaining who wanted their mail sent to the house? A. Yes, sir; the Department obliged that to be done.

Q. Can you explain any further than what you have already done just exactly what you had to do at the postoffice in Fredonia before you really became a carrier? A. No, sir, I could not.

By MR. STANCHFIELD:

Q. In other words, you did all you were asked to do? A. Yes, sir.

RE-DIRECT EXAMINATION:

(Mr. Coman read the questions and Mr. Stevens read the answers, as follows:)

Q. Did you ever, prior to the time when you became a carrier, do any work in the postoffice? A. Inside the postoffice?

Q. Yes. A. No, sir, not that I remember.

Q. Don't you remember, Mr. O'Neil, that the delay which was occasioned after the first of April in installing the free delivery service arose from the fact that those slips had not been returned to the office? A. I don't know what the delay was for.

Q. Wasn't it a fact those slips were not distributed until after the first day of April? A. I said I didn't remember when they were distributed.

Q. I ask you now whether you now remember? A. No, sir; I don't.

Q. Could you swear they were distributed before, about the first day of April? A. No, sir, I could not.

Q. Who drew the money from the bank on those checks I have shown you? A. I did.

Q. Personally? A. Yes, sir.

Q. Did your father commence to work for Justice Hooker at once after you left his employ? A. Pretty quick after I left there.

Q. Same day? A. No, sir, I don't think the same day.

Q. Who did your work there? A. I did.

Q. I am asking you after you got through there? A. My father did.

Q. Immediately? A. Why, within a few days after, yes.

Q. Who did the work there the few days? A. I said I did.

Q. Mr. O'Neil, after you got through working for Judge Hooker, did your father immediately commence to work for him? A. Yes, sir.

MR. STANCHFIELD: Mr. O'Neil said something about his wanting to go away.

MR. COMAN: Yes, I understand. Mr. O'Neil, we will excuse you, if counsel are willing.

ORA CALDWELL, called by Mr. Coman and being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. COMAN:

Q. How do you pronounce your name? A. Caldwell, that is the proper way. We are called Cadwell for short.

Q. My reason for inquiring is, I have heard a good many people call it Cadwell. A. At home they usually call us Cadwell, C a d; our name is spelled C a l d w e l l.

MR. CARR: He says his name is Caldwell, but they call him Cadwell for short.

Q. Where do you live? A. Fredonia, N. Y.

Q. How long have you lived at Fredonia? A. About eight years.

Q. Prior to that time, where did you live? A. Well, sir, my home was in Perrysburg.

Q. What county? A. Cattaraugus.

Q. Was that formerly the house of Justice Hooker? A. Yes, sir.

Q. Did you know Justice Hooker when he lived at Perrysburg? A. Yes, sir, he had been away from there, of course, for years.

Q. What is your age? A. 34.

Q. What is your present occupation? A. Clerk in the Fredonia postoffice.

Q. And how long have you been in that position? A. Since the spring of '99, 1899.

Q. What time in the spring of '99 did you commence work in the Fredonia postoffice? A. Well, I don't remember exactly; some time along the last of June, I think, or the first of July, I don't remember exactly.

Q. Did you commence work there when Mr. Mixer left the office? A. I think so.

Q. Mr. Mixer was not there after you commenced work there? A. No, sir.

Q. To whom did you apply to secure you a position in the Fredonia postoffice? A. I took the civil service examination.

Q. When? A. Fore part of March.

Q. But you were appointed before the fore part of March, weren't you? A. Yes, sir.

Q. When were you appointed? A. I don't remember.

Q. Was it on or about the 17th day of January? A. Might have been. I don't know.

Q. Do you remember from what time you commenced to draw pay in the Fredonia postoffice? A. No, I don't; some time in the fore part of the year, I suppose.

Q. State where you were and how you were employed in the months of January, February, March and April, of 1899. A. I was at home.

Q. Where was your home? A. Fredonia.

Q. What were you doing? A. My father had 13 acres of land in the village; wasn't doing much of anything, helping doing whatever there was to be done for him.

Q. Have you ever worked in the Brooks Locomotive Works at Dunkirk? A. Yes, sir.

Q. Were you there during the months of April, May and June? A. I was there for a few weeks along the latter; I don't remember just what time I went to work there.



Q. About how many weeks were you there? A. I think I must have went to work in May, as near as I can remember.

Q. And stayed until about what time? A. To the last of June.

Q. And did you make it your home in Dunkirk or did you return to Fredonia each night? A. Yes, sir; to Fredonia.

Q. The distance is only three or four miles? A. Three miles and a half.

Q. There is a trolley road running between them. A. Yes, sir.

Q. Did you work there at the Brooks Locomotive Works from April 24, 1899, to and including June 30, 1899? A. Well, I don't remember what time I commenced there; it was along in the spring after the snow went off. People were putting in their spring grain.

Q. Do you remember how much pay you drew from the Brooks Locomotive Works? A. No, I don't.

Q. Let me ask you if it was about \$83? A. I couldn't tell.

Q. How much a day did you receive for your services? A. I think about \$1.40. We worked nights at that time and only put in,—worked five nights for a week, so it would be a little more, put in our five nights for a week, for 60 hours. I don't remember just what it did amount to.

Q. I show you a check, which is Exhibit 93, dated Fredonia, May 13, 1899, payable to your order, and signed by A. R. Moore, P. M. (showing check to witness). Is the endorsement upon that check in your handwriting? A. It is.

Q. Did you receive the money upon it? A. Yes, sir.

Q. At what date? A. Along about Decoration time.

Q. Look at the stamp and see if that will help you to remember when you received the money, the stamp on there tells it? A. Along about, I should say, soon after Decoration.

Q. Where were you when you received this check? A. At my home.

Q. That check was given you for what, as you understood it? A. Mr. Moore gave me the check.

Q. What for, did he say what for? A. He told me he should want me in the office after a little.

Q. But he was paying you before he wanted you there?

Q. You never had performed an hour's service in the Fredonia postoffice at that time, had you, when you received this check?

A. No, sir.

Q. Had you ever been inside of the postoffice enclosure? A. Yes, sir.

Q. When? A. I don't know, I was inside there, I don't remember when it was.

Q. Inside the business portion of that office where the clerks and employees are? A. I went up there for carrying mail for street-car men one time for a few days; I just went in and out.

Q. A year before? A. Two or three years, perhaps, I don't know.

Q. You never had done an hour's work in the Fredonia postoffice under the administration of Mr. Moore, had you? A. I think not, no, sir.

Q. Did Mr. Moore deliver this check to you in person. A. Yes, sir.

Q. At your home? A. Yes, sir.

Q. Brought it to your house? A. Yes, sir.

Q. What did he say to you when he handed it to you? A. He told me he should want me in the office after a little. I asked him when, and he said that he would let me know.

Q. What did you say? A. I don't remember.

Q. Did you say anything? A. I don't remember what I said, if anything.

Q. What day of the week was it that you received this check from Mr. Moore? A. I don't remember.

Q. Was it in the daytime or in the evening? A. It was in the daytime.

Q. Was it during the period when you were employed at the Brooks Locomotive Works? A. Yes, sir.

Q. What were you doing at Fredonia in the daytime? A. I worked nights.

MR. CARR: He said he worked nights, Mr. Coman.

Q. And were home during the day? A. During the day, I was supposed to sleep.

Q. You know George Cooper? A. Yes, sir.

Q. Who is he, and where does he live? A. I don't know where he is now. I know there is such a man, know him when I see him.

Q. Where did he live when you knew him? A. Fredonia.

Q. What was he doing at Fredonia? A. I don't know, not much of anything.

Q. Do you know Oliver D. Sprague? A. Yes, sir.

Q. Who is he, and where does he live? A. He lives in Perrysburg.

Q. Did Cooper come from Perrysburg? A. Yes, sir.

Q. On the first or about the first day of July, did you receive another check from Mr. Moore, which I show you (showing check to witness)? A. About that time.

Q. When was it paid? A. It was paid July 6th.

Q. Did you take it to the bank and get the money on it? A. Yes, sir.

Q. What conversation did you have with Mr. Moore when he gave you this check for \$150 about the first day of July? A. I had no conversation with him.

Q. Where were you? A. In his private office in the postoffice building.

Q. What were you there for? A. I was working there, that was after I commenced,—

Q. (interrupting) That was the first day you commenced work, wasn't it? A. No, sir.

Q. How long had you been working there? A. A few days, don't remember.

Q. How many days? A. I could not say.

Q. Didn't you tell me, Mr. Caldwell, isn't it true that you didn't commence work until after Mixer left there? A. Yes, sir.

Q. Do you know whether he left there on the 30th day of June that year? A. I don't know just what date; I think he com-

menced his vacation just before the first of July, getting the last few of June. He was entitled to a leave of absence of fifteen days and I think he took it.

Q. You say you had no conversation with Mr. Moore when this check was delivered to you? A. I don't remember as I did.

Q. You were in the private office? A. Yes, sir.

Q. Mr. Moore stepped up to you and handed you a check for \$150 without a word, did he? A. No, sir, he called me in his office.

Q. What did he say to you, when he called you in? A. He gave me this check.

Q. Did he say, "Come in here, Caldwell," or what did he say? A. I don't remember whether,—I don't know, he called me in there.

Q. Do you remember anything that he said to you? A. No, sir, I don't.

Q. Did you sign the payroll? A. Yes, sir.

Q. Did you sign the payroll when this check, Exhibit 93, was given to you? A. I signed the payroll, I suppose.

Q. Did Moore bring the payroll down to your house when he brought this check down? A. Yes, sir, he had some paper for me to sign, and I signed it.

Q. You signed the payroll at your house? A. Yes, sir.

Q. Where did you sign it when the second check for \$150 was given to you? A. In his office.

Q. You say that you had no conversation whatever that you now recall, when the second check was delivered to you? A. I don't think so.

Q. Did you ever have any conversation with anybody about this check for \$124.65; did you ever have any conversation with Oliver D. Sprague about it? A. No, sir.

Q. Did you have a conversation with Oliver D. Sprague in a drug store at Dunkirk on the evening of June 4, 1899, concerning this check, Exhibit 93? A. I don't remember as I did.

Q. Do you swear that you did not? A. I could not say, I don't remember.

Q. Did you show him this check on the evening of June 4th, this check, Exhibit 93, in a drug store in the city of Dunkirk?

A. I don't think so.

Q. Do you swear you did not? A. I don't know, but I don't remember of it.

Q. Didn't you receive this check on the evening of June 4th, the day before it was paid to you at the Fredonia bank? A. I don't know.

Q. Did you carry this check to Dunkirk with you? A. I don't remember that.

Q. Will you say that you did not? A. I won't say I did not or I did, I don't remember.

Q. After you received \$124.65 from the Fredonia bank on this check, what did you do with it? A. That money went to repairing my father's home, house.

Q. Every dollar of it? A. Yes, sir, I think it did.

Q. You didn't pay any part of it to any other person? A. No, sir.

Q. Or for any other purpose, except it was repairs, repairing done to your father's house? A. No, there was a carpenter at work at the time Mr. Moore came up there, and that money was used for repairing the place.

Q. When did you first learn you had been appointed a clerk? A. At the time Mr. Moore came up there to the house.

Q. To give you this check, Exhibit 93? A. Yes, sir.

Q. That was your first knowledge of the fact you had been appointed a clerk in the Fredonia postoffice? A. It was.

Q. That was on or about May 13th, you say? A. No, it was along Decoration time.

Q. Who did you make application to, to be appointed a clerk in the Fredonia postoffice? A. I don't know as I made application to no one.

Q. Did you ever ask anybody to assist you in procuring the appointment as a clerk in that office? A. No, sir.

Q. You never knew or suspected that you were to be appointed did you, until Mr. Moore gave you this check? A. I took the civil service examination and passed it, and, of course, looked with the rest of them in hopes we would get an appointment.

Q. You never knew you had been appointed prior to the civil service examination, did you? A. No, sir.

Q. When did you first learn? A. When Mr. Moore came and gave me the check.

Q. What did Mr. Moore say to you upon the subject? A. He said he should want me in the office after a little.

Q. Did he say you had been appointed to a position in the office? A. I think so, yes, sir; he gave me the check.

Q. Did he give you the date of your appointment? A. No, sir.

Q. When did you first learn that on the 17th day of January, 1899, you had been appointed a clerk in the Fredonia postoffice?

A. I didn't know when it was; I didn't know the date.

Q. Did you ever know it until now? A. No, sir.

Q. Was there any talk between you and Mr. Moore as to what your salary was? A. No, sir.

Q. Did you ask him how that amount of \$124.65 was made up? A. No.

Q. And he didn't tell you? A. No.

Q. You took the civil service examination when? A. Along about the first of March.

Q. 1899? A. Yes, sir.

Q. That was for the carriers? A. For both.

Q. For both carriers and clerks was it? A. Yes, sir.

Q. And at the time you had no knowledge or intimation that you had been appointed a clerk in the Fredonia postoffice? A. No, sir.

Q. You had never solicited an appointment in that office? A. No, sir.

Q. What did you do with this \$150? A. That also went to repairs on the house.

Q. All of it? A. Yes, sir; there might be a few cents. The house needed repairs; it took more than that. That was used to repair the house; it was needed for the work.

Q. This check for \$124.65, was anything said between you and Mr. Moore as to what period of time it covered? A. No.

Q. Nor as to what your compensation was, either by the day or month, or any other way? A. No, sir.

MR. STANCHFIELD: One moment. Mr. President, counsel for Judge Hooker moves with reference to the evidence of Ora Caldwell, that it be stricken as incompetent, irrelevant and improper, upon the ground that there is nothing in the evidence connecting it in any way with Warren B. Hooker.

THE PRESIDENT: What connection has this evidence, Mr. Respondent?

MR. COMAN: Mr. President, I would be very glad if this question could be reserved for a little while, if counsel are willing. I can then more intelligently discuss it.

THE PRESIDENT: I shall at this time deny the motion if counsel will agree to connect it with the respondent, and if such connection is not shown they can renew the motion. At present it is denied.

By MR. COMAN:

Q. Mr. Hooker, where do you live? A. Live at Perrysburg.

Q. Allegany county? A. No, sir; Cattaraugus county.

Q. That is how far from Fredonia? A. Eighteen miles.

Q. And do you live with your father? A. I live with my uncle at Perrysburg.

Q. And Perrysburg has been your home how long? A. It has always been my home, except I have been to Hamlet with my father for five or six years, Chautauqua county.

Q. What is your age? A. At the time I was in the postoffice or now?

Q. What is your age now? A. I am 20 years old now.

Q. You were 20 when? A. Last February.

Q. Now, you remember, do you not, Mr. Hooker, that in the month of January, 1902, you were in Fredonia? A. Yes, sir.

Q. And you remember that you were appointed about the 11th day of January to a position in the Fredonia postoffice. A. I don't recall the day I was appointed.

Q. You don't remember the date, but you remember it was about that time? A. I don't remember just when it was; I remember I was appointed some time that month.

Q. In January, 1902? A. Yes, sir.

Q. Had you been in Fredonia prior to your appointment? A. Yes, sir; once and a while, not very often, though; not to stay any length of time.

Q. For what purpose had you been there? A. Been to visit my uncle.

Q. Your uncle, Justice Hooker? A. Yes, sir.

Q. And soon after your appointment, you went to Fredonia and remained there for a period of how long? A. Until April, last April.

Q. April, 1904? A. Yes, sir.

Q. And during all of that time were you regularly, and each month, receiving from the postmaster at Fredonia a salary? A. Yes, sir.

Q. For what, as you understood it, for what services? A. For working around in the office, scrubbing, washing windows, sweeping, that sort.

Q. In short, for performing the duties of a laborer in the Fredonia postoffice? A. Yes.

Q. Did you ever perform any services in that postoffice? A. No, sir, I did not.

Q. When first did the subject of your appointment to a position in the Fredonia postoffice first come up? A. Soon after I got to Fredonia, 1902.

Q. What did you go to Fredonia for, Maurice? A. To attend the Normal school.



Q. Who first spoke to you upon the subject of your being appointed to a position in the Fredonia postoffice? A. I think it was the postmaster.

Q. Mr. Taylor? A. Yes, sir.

Q. Where was this? A. Now, I can't recall where it was.

Q. Well, you think he came to see you, or you went to see him?  
A. I think he came to see me.

Q. Whereabouts were you living? A. 16 Newton street.

Q. That was a boarding house, was it? A. Yes, sir.

Q. A private family you were boarding with? A. Yes, sir.

Q. What were the names of the people? A. Hingham.

Q. Down to that time, nothing had ever been said to you by anybody on the subject? A. No, sir.

Q. Well, what did Mr. Taylor say to you? A. He said he wanted someone to work in the postoffice, he was going to make an appointment and wanted my name to be recommended as laborer in the postoffice, he thought he would get me appointed there.

Q. What did you say? A. I told him I should like very much to have an appointment, so I could earn a little something while I was at school there.

Q. Anything further? A. No, sir.

Q. Nothing further said by either of you? A. No, sir.

Q. It was in the month of January, wasn't it, Maurice, this conversation? A. Yes, sir.

Q. Can you tell us whether it was after or before the 11th of January? A. No, sir, I could not.

Q. When did you next see Mr. Taylor? A. Why, I used to see him most every morning, I had to go right by his house when I went to school in the morning.

Q. When did you next see him to have any conversation with him on this subject? A. I don't remember.

Q. You remember, you did subsequently see him and have a conversation with him? A. No, sir, I don't remember any.

Q. Not even after you were appointed, Maurice? A. Why, I think about the time I was appointed, then we had a conversation.

Q. And where was that conversation? A. In the postoffice.

Q. Tell us what was said at that conversation? A. He told me that I had the appointment and that he would let me know when he wanted me to come to work.

Q. Anything further? A. No, sir.

Q. Did he mention your uncle in the conversation, Justice Hooker? A. No, sir.

Q. He said he would let you know, did he, when he wanted you to come to work? A. Yes, sir.

Q. When did you next have a conversation with Mr. Taylor? A. I don't remember.

Q. Did he ever let you know he wanted you to come to work? A. No, sir.

Q. How did you draw your pay, Maurice, in money or by checks? A. In money.

Q. You never received any checks from Taylor? A. No, sir.

Q. Was your uncle present at any of these conversations with Taylor? A. I don't think he was.

Q. You remember, don't you, that you were called as a witness and made a statement before the Grievance Committee of the Bar Association? A. Yes, sir.

Q. And were you asked on that examination this question: "Who told you, you had the appointment?" A. I don't remember.

Q. Do you now remember, your uncle did tell you you had received the appointment? A. No. ●

Q. Do you remember, Maurice, whether you ever had a conversation with Mr. Taylor and your uncle, in your uncle's office at Fredonia, on this subject? A. I remember of being up there with Mr. Taylor one day, but my uncle went out of the office, he had other business and left the postmaster in there to talk to ourselves.

Q. Well, did your uncle take part at all in that conversation? A. No, sir. ●

Q. Did you ever have any talk with your uncle about this appointment? A. I did not.

Q. Had you ever seen Mr. Taylor down to the time when you received this appointment? A. I think I had, he used to come over to Perrysburg, to my uncle's once in a while.

Q. Did you testify before the Bar Committee that you never had seen him until a certain occasion when you met him and your uncle in your uncle's office? A. I don't remember.

Q. Do you now recall any occasion that you ever saw Mr. Taylor prior to this time when the subject of your appointment was mentioned? A. Yes, sir, I do.

Q. Where and when? A. Over to my uncle's at Perrysburg.

Q. Did you testify before the Bar Association Committee as follows: "Q. Who told you you got the appointment? A. My uncle and the postmaster." Did you testify to that? A. I don't remember that I did.

Q. "Q. Your uncle told you you had the appointment, did he? A. And the postmaster." Did you testify to that? A. I don't know that I did.

Q. "Q. Yes, and your uncle told you? A. Yes." Did you testify to that? A. I don't recall any of this conversation.

Q. I am asking you now if you remember what you testified to before the Bar Association Committee? A. I can't remember as I testified to any of this.

Q. Did you testify to this: "Q. And the postmaster told you? A. Yes, sir." Did you testify to that? A. I can't remember as I did.

Q. Did you testify to this: "Q. Now, where did the postmaster tell you; where was it? A. In my uncle's office."? A. I can't recall he was in the office that time.

Q. Did you testify to that before the Bar Committee? A. I don't know whether I testified to it.

Q. And this: "Q. Did he tell you you had the appointment or was going to have it? A. I was going to have it." A. I think that is right.

Q. You think you so testified? A. Yes, sir.

Q. And in answer to this question: "Q. You and the postmaster and your uncle were in his office and it was arranged

there you were to have an appointment? A. Yes, sir."? A. My uncle wasn't in the office.

Q. Did you testify to that before the Bar Association Committee? A. I don't know.

Q. Don't know whether you did or not? A. No.

Q. "Q. Was it talked how much you were to have? A. No, sir." Did you testify to that? A. Yes, sir.

Q. "Q. Was that before or after you started in school? A. No, afterwards." Did you testify to that? A. I hadn't started in school at that time.

Q. Did you testify to that, I am now talking about, before the Bar Association Committee? A. I don't know.

Q. "Q. After you came here? A. Yes, sir." Was that your testimony? A. What is the question, please?

Q. That refers to your coming to Fredonia, that it was after that, your talk to him? A. Yes, sir, that is right.

Q. And to this question: "Q. Had you ever known Mr. Taylor before that time? A. No." Did you testify to that? A. I don't know whether I testified to it or not.

Q. And to this question: "Q. Had you ever seen him before? A. I don't remember ever seeing him before." Did you testify to that? A. I don't know.

Q. "Q. That was the first you remember anything about him? A. Yes, sir." Testify to that? A. I don't know.

By MR. CAHN:

Q. If you did so testify, is that true? A. I don't think it was.

By MR. COMAN:

Q. The stenographer who reported the hearing before the Bar Association Committee is the gentleman who sits right here and is taking the testimony now, wasn't he? A. I think he was, yes, sir.

By MR. CUNNINGHAM:

Q. Before you saw the postmaster, Mr. Taylor, the time that you have testified to here that he came to your house and told

you he thought he could get you an appointment, had you ever had any conversation with your uncle Justice Hooker? A. I had not.

Q. Do you remember swearing to an affidavit on the 21st day of May, 1904, before Harry B. Espy, notary public? A. Yes, sir, I do.

Q. Did you swear to this in that paper: "I began attending school in the village of Fredonia at the State Normal School. Jus-Warren B. Hooker, of Fredonia, is my uncle. I had a talk with him some time before I began going to school at the Normal and he thought he might be able to get some position for me by which I could earn something while I was attending school, and I was appointed to a position as laborer in the Fredonia post-office on the application of the postmaster." Did you swear to that? A. I think I did, yes, sir.

Q. When you had that conversation with your uncle in regard to a position, did he mention the nature of the position he could get for you? A. No, sir.

Q. Or where he could get it or anything of that sort? A. No.

By MR. CAHN:

Q. Then you did have a conversation with your uncle relative to a position before you actually got it? A. Yes, I think I did.

By MR. COMAN:

Q. Now, where was that conversation, Mr. Hooker? A. I don't remember. ●

Q. Don't you remember whether it was at Fredonia or at Perrysburg? A. No, sir.

Q. Don't remember anything about it? A. No, sir; I don't.

Q. What was that conversation, what did your uncle say to you and what did you say to him? A. I can't recall any conversation that we had.

Q. Was there anything said about your going to school at Fredonia in that conversation? A. I don't think there was.

Q. Did you ever have any talk with your uncle about going to school at Fredonia? A. Yes, sir.

Q. When? A. I don't remember when it was.

Q. Was it before you went there? A. Yes, sir.

Q. Where was it? A. Why, I think it was over to Hamlet.

Q. And that is how far from Fredonia? A. About 15 miles.

Q. That is your father's home? A. Yes, sir.

Q. Did Judge Hooker come over there? A. Yes, sir.

Q. About how long before you went to Fredonia? A. I don't remember.

Q. Well, was it in the fall before? A. Yes, sir.

Q. Or that same winter? A. Yes, sir; I think so.

Q. Which? A. I think it was in the winter time, same winter.

Q. What did Judge Hooker say to you and what did you say to him about an appointment or a position? A. He didn't say anything about an appointment there.

Q. When did he? A. I don't remember when he mentioned about an appointment.

Q. You say there was a talk about your going to school at Fredonia? A. Yes, sir.

Q. What did you say about it and what did the Judge say? A. He just asked me if I would not like to attend school up there, and I told him I would. That is all there was said about it.

Q. At that time there was nothing said about this position? A. No, sir.

Q. Was it before or afterwards there was some talk between you and Judge Hooker about a position? A. Afterwards.

Q. Where was it? A. I don't remember.

Q. What did he say? A. Now, I can't tell you just what he said.

Q. Not the exact words, but in substance what did he say? A. He thought he might be able to get me a position somewhere, where I could earn some money. That was the substance of it.

Q. Was that in connection with some talk about your going to school? A. No, sir; it was not.

Q. Did he mention any particular place where he thought he could get you a position? A. No, sir.

Q. You don't remember whether you were at Fredonia or where you were at that time? A. I don't remember.

Q. Did you have more than one talk with your uncle about a position? A. No.

Q. When you went to Fredonia did you go to see your uncle; I mean when you first went there in January? A. Yes, sir.

Q. Did you have a conversation with him? A. Yes, sir.

Q. Where was it, at his house or office? A. In his house.

Q. Did you tell him you had come to Fredonia to go to school? A. Yes, sir.

Q. Did you have any money to pay your expenses in school? A. Yes, sir.

Q. How much? A. I don't know how much I had; I got some from home.

Q. Where did you get it? A. From home.

Q. From your father's people? A. Yes, sir.

Q. And you went up to the house to visit with your uncle? A. Yes, sir.

Q. And you told him you had come to Fredonia to attend the Normal School? A. Yes, sir.

Q. What did he say? A. I don't remember, but he thought it was a pretty good plan to have me come there to school.

Q. Then did the subject of his helping you to a position come up again? A. No, sir.

Q. What did you talk about? A. Well, I don't know.

Q. How long did you stay there? A. I don't know, may be half a day.

Q. That was after you had come to Fredonia to attend school? A. Yes, sir.

Q. When next did you go up to see the Judge? A. I don't remember when I went up.

Q. You went up occasionally, I suppose? A. Yes, sir; once in a while I used to go up.

Q. About how often? A. Why, I don't know.

Q. You were on friendly terms with the Judge and his children and Mrs. Hooker? A. Yes, sir.

Q. And you used to go up occasionally to call, I suppose? A. Yes, sir.

Q. And you used frequently to see the Judge there when he was in town? A. When he was at home I used to see him, yes.

Q. Well, now, Maurice, when did you and your uncle first have any talk about your going to the postoffice? A. I don't remember as we ever had any talk about going in the postoffice.

Q. Never have down to to-day, have you? A. No, sir.

Q. Notwithstanding all that has been said about this subject and about your having received this money, you and your uncle have never had any talk about it? A. No, sir.

Q. When did you receive your first pay? A. I don't know.

Q. Pardon me just a moment. Do you remember testifying before the Bar Association Committee that your uncle told you that you had got to do the work there that the postmaster asked you to, in substance? A. I think so.

Q. And yet you now say you never had any talk with him on the subject, don't you; is that right? A. Not exactly.

Q. Will you tell us what exactly is right, then, tell us? A. After I learned I was appointed to a place there to work in the office, then he told me I must do all the work the postmaster required of me, and do it as it should be done.

Q. How did he come to tell you that? A. I don't know.

Q. You didn't tell him you were not going to do the work, did you? A. No.

Q. Where was that conversation? A. I don't remember where that conversation was.

Q. Who first spoke about the postoffice appointment, you or your uncle? A. I don't remember.

Q. Now, give the Committee the whole of that conversation as near as you can remember it, tell what you said and what your uncle said, so far as it relates to the postoffice matter? A. I can't give that conversation.



Q. Give any of it that you do remember. A. I think I spoke to him when I had been appointed in the postoffice as laborer, and he cautioned me to do the work, do it well, do it as the postmaster required of me; that is all.

Q. Was that up in your uncle's office? A. I don't remember.

Q. Was Taylor there? A. I don't think he was.

Q. I will ask you a little further, Mr. Hooker, as to what you testified to before the Bar Committee. Did you testify as follows in answer to a question,—

“Q. Who told you you had received the appointment as it had been planned? A. I don't know now.”? A. I can't tell.

Q. Did you know at that time who told you you had been appointed? A. Yes, sir.

Q. Who was it? A. The postmaster.

Q. Why didn't you tell the Bar Association Committee that the postmaster,—A. (interrupting): At the time I hadn't thought anything about this subject, and I was unable to answer the questions that were asked.

Q. Your recollection about it is better now than it was at that time, is it? A. Yes, sir.

Q. And further, in the same connection, did you testify: “Q. Don't you remember? A. No, sir.” Did you testify to that? A. I don't remember.

Q. “Q. Well, there came a time when somebody told you you had been appointed, I suppose? A. Yes, sir. Q. Don't you recollect whether it was your uncle or Mr. Taylor or some one else? A. No, sir.” Did you testify to that? A. I don't remember.

Q. Do you remember when you received your first pay, Mr. Hooker. A. I think it was the first of February.

Q. Do you remember how much you received? A. No, sir, I don't.

Q. Can you tell nearly, very nearly, how much it was? A. No, sir.

Q. Did you receive \$10? A. I think I did, more than that.

Q. Did you receive \$20? A. I can't say whether it was more than that or not.

Q. You knew what your monthly salary was, didn't you? A. No, sir.

Q. Or yearly? A. Yes, sir.

Q. How much? A. \$400 a year.

Q. And that would be how much a month? A. About thirty-three dollars and a fraction a month.

Q. When did you next receive your salary—did you receive it each month? A. Yes, sir.

Q. How much did you receive in March? A. I don't remember.

Q. Do you remember how much you received in any month? A. No, sir.

Q. Did you keep any books? A. No, sir, I didn't.

Q. Any diary? A. No, sir.

Q. Did you ever keep any memorandum of how much you received from Mr. Taylor? A. No.

Q. And you are wholly unable to tell the Committee how much you received? A. Yes, sir.

Q. What is your recollection, your best recollection as to about how much you received from Mr. Taylor each month down to April, 1904? A. I can't just tell how much it was, but it was the original salary minus the expenses.

Q. I understand you can't tell exactly how much it was, but I ask your best recollection about how much it was. A. I presume about \$25 a month.

Q. About \$25 a month? A. Yes, sir.

Q. You think the balance some eight dollars or more a month,—  
A. (interrupting) Some months it would be more, some less.

Q. (continuing)—was deducted out of your salary by Mr. Taylor and retained by him? A. Yes, sir.

Q. I understand you to say you received some payment each month from Mr. Taylor from the time of your appointment in January, 1902, until your removal or resignation from the office in April, 1894? A. Yes, sir.

Q. Every month? A. Yes.

Q. And do you think it would average about \$25 a month.  
A. I couldn't say, but I should judge about that.

(Cross-examination of Maurice Hooker read by Mr. Carr answers by Mr. Goodrich.)

MAURICE HOOKER, recalled.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Maurice, how old did you say that you were? A. 20 years old.

Q. When were you 20 years old? A. The 22nd day of January.

Q. Of this last year? A. Yes, sir.

Q. This last January? A. Yes, sir.

Q. Now you started to attend school at Fredonia in what month? A. In January.

Q. Of what year? A. 1902, I think.

Q. When you were 18 years old? A. Yes, sir.

Q. A little past? A. Yes, sir.

Q. What school were you intending to attend at Fredonia?  
A. The Normal school.

Q. Had you attended school before that? A. Yes, sir.

Q. Where? A. Hamlet.

Q. What kind of a school? A. Union school.

Q. And how many years had you been there? A. I had been there five or six years.

Q. Before you left to go to the Normal school? A. Yes, sir.

Q. Now you were asked some questions, if you gave answers to questions before the committee of the State Bar Association, you said in response to some inquiries from Mr. Coman, do you recall having answered—do you understand what I mean? A. No, sir.

Q. There was a time when you were sent for to appear at Fredonia before a committee of the State Bar Association? A. Yes, sir.

Q. That was about when? A. I don't know; I think it was in the fall of the year.

Q. Of this last year? A. Yes.

Q. 1904? A. I think so.

Q. Now before these questions were put to you at that time had you talked with any one, or had your attention been called to the facts with reference to which questions were to be put to you? A. No, sir.

Q. You at that time had never talked with anyone in reference to what you were expected to testify to? A. No, sir.

Q. In this proceeding were you put under oath, do you remember? A. I do not think I was.

Q. Do you recollect where it occurred? A. Yes, sir, in the Columbia Hotel.

Q. At Fredonia? A. Yes, sir.

Q. Now, your remembrance this morning, is that before you went to Fredonia Judge Hooker visited your home at Perrysburg? A. Yes, sir.

Q. In Cattaraugus county? A. Yes, sir.

Q. Do you recollect about when that was? A. No, sir, I do not.

Q. Could you give us a notion in months before you came to Fredonia how long it was? A. No, I do not believe that I could.

Q. Well, did he come there for the purpose of making a social visit? A. Yes, sir.

Q. Will you tell in your own way just what conversation you had with him at that time, as nearly as you can recollect it, I mean upon the subject of your going to Fredonia? to school? A. All I can recall is, he asked me if I would like to go there to school and I told him I would like to; that is all I can remember about it.

Q. That is all you now remember about it? A. Yes, sir.

Q. Was there any talk between you and your uncle at that time about his trying to get you some position? A. No, sir.

Q. That would enable you to earn some money while you were attending school in Fredonia? A. There was not.

Q. Do you recollect when you had a talk of that character? A. No, I do not.

Q. Well, your recollection now is that the talk at your home was to the effect that he wanted to know whether you would like to attend school at Fredonia? A. Yes, sir.

Q. And you did desire to? A. Yes, sir.

Q. Do you remember whether your father and mother were present or not? A. No, I do not.

Q. Were they both living at the time? A. Yes, sir.

Q. And are now? A. Yes, sir.

Q. Your home was how far from Fredonia about? A. About 18 miles.

Q. Something like 18 miles? A. Yes, sir.

Q. How did you get there, by driving? A. Yes, sir.

Q. You say you left your home and went to Fredonia some time in the month of January? A. Yes, sir.

Q. Of 1902? A. Yes, sir.

Q. What is your recollection as to whom you first saw or talked with in regard to getting a place in the postoffice? A. I think it was the postmaster that first spoke to me about it.

Q. Mr. Taylor? A. Yes, sir.

Q. I notice that you were asked before the Bar Association whether you had ever seen Mr. Taylor before or not, and you said that you did not remember. Do you have any recollection now as to whether or no you had seen Mr. Taylor before that? A. Yes, sir.

Q. Had or hadn't you? A. Yes, sir, I had.

Q. Seen him to know him by sight, or had you talked with him? A. He had been over to my uncle, over to Perrysburg, a number of times, but I was small and I did not know him very well.

Q. And it was in that way that you had seen him. A. Yes, sir.

Q. Can you recall what the talk was that you had with Mr. Taylor? A. I think that he said something this way, that he wanted to have some one work in the postoffice, and he had made an application for someone and wished I could be the one that would fill the place.

Q. That would fill the place? A. Yes, sir.

Q. Now, was there any talk between you and Mr. Taylor at that time that you can remember over the kind of work that he wanted done there? A. I do not think there was.

Q. None that you recall? A. No, sir.

Q. Now, I notice in this affidavit to which your attention was called this morning—you remember the fact that you made an affidavit? A. Yes, sir, I do.

Q. Mr. Coman called your attention to it, before H. Espy? A. Yes, sir.

Q. As a notary public? A. Yes, sir.

Q. Now, if you stated in this affidavit, I want to read this to see if you remember the language, in reference to your uncle, "I had a talk with him," meaning your uncle? A. Yes, sir.

Q. "Some time before I began going to school at the Normal, and he thought he might be able to get some position for me by which I could earn something while I was attending school." Now, do you now recall about that, that you had any talk of that character with your uncle, the Judge? A. No, sir; I do not.

Q. Do you remember where you had such a talk, I mean where it was, whether it was at your house? A. I do not remember where it was.

Q. Or at his home? A. No, sir; I do not know which it was.

Q. Do you remember having any talk with him of that kind? A. Yes, sir.

Q. But you cannot tell when? A. No, sir.

Q. Nor with any certainty where, is that right? A. Yes, sir.

Q. Now, in the affidavit later you make this statement, "My uncle told me when I got this appointment that I would have to do this work here, and insisted that I must not neglect it, but give it just as close attention as the postmaster required." That was a talk, I judge from the affidavit, that you had with your uncle some time after? A. Yes, sir.

Q. You had been told that you had received an appointment in the postoffice? A. Yes, sir.

Q. Now, can you tell us in your own way what your uncle said to you upon that subject? A. I do not think I can.

Q. Is that statement in the affidavit that I have read to you generally the conversation you had with him as you remember it.

A. Why, I think so.

Q. Do you remember where you were when you first told that you had received an appointment in the postoffice? A. I think I was up in his office.

Q. In your uncle's office? A. Yes, sir.

Q. Who was there? A. The postmaster and my uncle.

Q. Did your uncle stay there while you were having a talk with the postmaster? A. No, sir; he did not.

Q. How many rooms are there in your uncle's office. A. I think there are three different rooms.

Q. Now, do you recollect whether your uncle stayed in the office or whether he went out? A. No, sir; I do not.

Q. What talk did you have with the postmaster in his office, as nearly as you can give it? A. As near as I know, he told me that I had been appointed as a laborer there in the postoffice, and I do not remember anything else that he spoke about; he told me what kind of work I had to do.

Q. What talk did you have upon the subject of the kind of work that you had to do? A. He told me I was to wash the windows and sweep and the like of that, but I was not to handle the mail of any kind.

Q. You were not what? A. I was not to handle the mail or packages of any kind.

Q. Did he tell you then do you remember, what your salary was to be? A. Yes, sir.

Q. And it was how much? A. \$400 a year.

Q. Now, when did you have any talk with the postmaster in reference to having some one else do this work and take out what it cost from your salary? A. I think it was soon after that.

Q. Do you recollect when it was or where it was that you had that talk with the postmaster? A. No, sir; I do not.

Q. Did you in fact have such a talk? A. Yes, sir.

Q. Upon that subject? A. Yes, sir.

Q. Now, tell the Committee as well as you are able what your

talk was with the postmaster upon that subject. A. As near as I can say, I reported for work occasionally, and one day he spoke to me about hiring someone to do the work and paying it out of my salary, and he thought it would be all right, and I thought it would, so he found someone and employed them and paid it out of my salary.

Q. Did you sit down with him or did he make any explanation to you from time to time when he paid your salary? A. No, sir.

Q. Wait until I get through—as to the amount that was taken out of your salary for those purposes? A. No, sir.

Q. There was, you said to Mr. Coman, every month something taken out of it? A. Yes, sir.

Q. And that amount was the amount that was paid out by him for cleaning and scrubbing and caring for the office? A. Yes, sir.

Q. Your salary then was not always the same? A. No, sir.

Q. I notice that you stated before the Bar Association that it was sometimes as low as \$15.00 and never above \$40.00; did it vary to that extent as you remember? A. I do not remember, but I do not think—

Q. You were asked this question: Q. "How much was the most you ever had in one month? A. Thirty dollars was the most and fifteen dollars was the lowest." Now are you able to recollect? A. I think that fifteen dollars was the first month.

Q. The first month? A. Yes, sir.

Q. In which your appointment had not reached over an entire month? A. I do not think so.

Q. Did you see Mr. Taylor every month? A. Yes, sir.

Q. Do you recollect where generally these payments were made to you? A. Yes, sir.

Q. Where? A. In his office in the postoffice.

Q. In the postoffice proper? A. Yes, sir.

Q. It would be in money? A. Yes, sir.

Q. Do you know, Maurice, where the postmaster was when he paid you that little slip upon which he kept a memorandum? A. I do not.



Q. Of what he had paid out for work upon the offices? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. You took the balance that he said was coming to you? A. Yes, sir.

Q. Did that continue down until the time you left the office? A. Yes, sir.

Q. And you left it, when? A. In April, last year.

Q. April, 1904? A. No, it did not continue until April; I think it continued until the first of August.

Q. Of 1904? A. Yes, sir.

Q. That is, you mean the first of last August? A. Yes, sir.

Q. During that time were you paid in the way that you have described? A. Yes, sir.

Q. You mean 1903 or 1904; you were appointed in January, 1902; was it last August or a year ago last August that you stopped work? A. I guess it must be a year ago, because I was just one year and a half on the payroll.

Q. That would be then a year ago last August? A. Yes.

Q. August, 1903. A. Yes, sir.

Q. During all that time, a year and three or four months, while the Normal school was in session, did you attend school there? A. Yes, sir.

Q. What did you do with the money Mr. Taylor paid you from time to time? A. I used it to pay my own expenses.

Q. And when you pay expenses, expenses of what kind? A. In living there in town.

Q. Your living expenses in town? A. Yes, sir.

Q. You mean by that, board? A. Yes, sir.

Q. Did you have to purchase anything for use in the school? A. Yes, sir.

Q. Did you ever divide or give up that money or any portion of it to anybody else? A. No, sir.

Q. You had it? Yes, sir.

Q. And used it? A. Yes.

Q. Every penny of it, except what Mr. Taylor kept out? A. Yes.

Q. Maurice, did you ever have any talk with your uncle in which you said anything to him concerning the conversation or talk you had with Taylor in reference to having someone else do the work? A. I had not.

Q. At no time or place? A. Yes, sir.

Q. Now, before you went to Fredonia to attend school there had you been accustomed to hard work? A. Yes, sir.

Q. Where did your father live? A. Hamlet.

Q. And was he a farmer? A. Yes.

Q. What kind or sort of work did you do upon the place? A. I had to do the same as ordinary hired men had to do.

Q. All kinds of work upon a farm? A. Yes, sir.

Q. And had you been engaged in that kind of labor? A. Yes, sir.

Q. Commencing back at what age? A. Why, ever since I was old enough.

Q. Ever since you were old enough to work? A. Yes.

Q. So that so far as the labor was concerned, in order to get money enough to help yourself along, were you willing to take care of this postoffice? A. Yes, sir, I was.

Q. And did you tell Mr. Taylor that? A. Yes, sir.

Q. Do you recall whether the kind of work which you were to do at the postoffice or were willing to do was ever talked over between you and your uncle? A. I do not think it was.

RE-DIRECT EXAMINATION by MR. COMAN: read by MR.  
COMAN:

Q. Now, Maurice, just a question or two. I understand you to say in answer to Mr. Stanchfield's questions just now that before the time when you were examined by the Bar Association committee you had never talked this matter over with anyone? A. No, sir, I had not.

Q. Did you talk with anyone before you signed this affidavit? A. I did not.

Q. Which you swore to before Harry B. Espy? A. I had not.

Q. Do you know who drew the affidavit? A. Yes, sir.

Q. Who drew it? A. Arthur Wade.

Q. Did you talk with Arthur Wade about it? A. No, sir. I did not.

Q. And do you know where Arthur Wade got the information which he puts in this affidavit? A. I do not.

Q. You never gave him any? A. Why, I just told him what to put down, that is about all.

Q. What to put down? A. Yes, sir; he asked me and then put it down.

Q. He asked you questions, didn't he, about your connection with this postoffice? A. Yes, sir.

Q. And you made answers to them? A. Yes, sir.

Q. And then he would write them down in the affidavit? A. Yes.

Q. So you did talk with Mr. Wade about it, didn't you? A. Yes.

Q. Where did you swear to this affidavit, Maurice, where does Mr. Espy live, at Fredonia, or at home—at Fredonia or at your home? A. Yes, sir.

Q. At Fredonia? A. Yes, I think he does.

Q. I see that in this affidavit you stated at the close of the affidavit that you had engagements such as made it quite impossible "for me to be in the city of Dunkirk on the 21st day of May." What were those engagements? A. I cannot remember now.

Q. In your affidavit and in your testimony before the committee, the affidavit being made the 21st day of May, 1904, and the testimony having been given in July, the 7th of July, I think, you stated that your age of eighteen; were you mistaken about your age then, or is that a misstatement of your evidence, or are you mistaken about it now? A. I am not mistaken about it now.

Q. Twenty is correct? A. Yes, sir.

You were 20 in January last? A. Yes, sir.

Q. You said to Mr. Stanchfield that you reported for work occasionally to Mr. Taylor, did you not? A. Yes, sir.

Q. Do you remember the first time that you reported for work? A. I do not, but it was soon after he told me that I was appointed.

Q. Do you remember how soon after? A. I do not.

Q. And what did Mr. Taylor say to you the first time you reported for work? A. He told me he would let me know when he wanted me.

Q. And then you shortly again reported; how shortly after did you again report? A. Well, I cannot tell you just how soon, but I was walking up the street with him one day and I asked him about it, and he said as soon as he wanted me he would let me know.

Q. Do you know how many times you reported to him before this last conversation in which he told you that he would employ somebody to do the work? A. I do not.

Q. Could you give us about the date of that last conversation? A. I cannot.

Q. You never reported for work after that, I suppose? A. No, sir;; after he spoke about that.

By MR. WEMPLE:

Q. Did any of your relatives, unless it be Judge Hooker, know the postmaster at Fredonia, Mr. Taylor? A. Yes, I think so.

Q. You think they did? A. Yes, sir.

By MR. CAHN:

Q. This morning you testified that you were first informed as to the fact that you would get a position by the postmaster; I understand in answer to a question by Mr. Stanchfield you said that you were first informed by Judge Hooker; which is the fact? A. I do not understand the question.

Q. After this conversation which you had with Mr. Taylor relative to the work which you were to do there or the work you were not to do there, did you ever speak to Judge Hooker about the matter at all? A. I don't know whether I spoke to him about it or not.

Q. You don't know whether you did or not? A. No, sir; I don't remember now.

Q. You went to school there in Fredonia right along? A. Yes, sir.

Q. Saw your uncle, Judge Hooker, there from time to time? A. Yes, sir.

Q. And never mentioned to him what you were doing in the postoffice? A. No, sir.

Q. Did he ever inquire from you? A. No.

Q. You are his nephew? A. Yes, sir.

By CHAIRMAN FISH:

Q. You remember distinctly the occasion when you swore to the affidavit before Mr. Espy? A. No; I do not.

Q. I suppose at that time you meant to state the truth? A. Yes, sir.

Q. And you did state the truth in that affidavit as nearly as you then remembered it? A. Yes, sir.

Q. And I suppose when you made your statement before the committee you meant to state truth as fully and as fairly as though you were under oath? A. Yes, sir.

Q. And you did so state it as near as you then recollected it? A. Yes, sir.

Q. Did you ever ascertain who performed the services for you? A. No, sir.

Q. Ever make any inquiry in regard to it? A. No, sir.

Q. Do you know who did perform any of them? A. I do not.  
Mr. Coman then read.

KATHERINE K. CLARK, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. COMAN:

Q. Miss Clark, you live at Fredonia, do you? A. Yes.

Q. And you are now employed in the Fredonia postoffice? A. I am at certain times of the year.

Q. As a substitute clerk? A. Yes.

Q. Do you remember when you were first appointed to a position in the Fredonia postoffice? A. When I was appointed in the Fredonia postoffice? I do not quite understand the question.

Q. Do you remember learning of the fact that you had been appointed to a position in the Fort Plain postoffice? A. Yes.

Q. When did you learn of that fact? A. Some time in December, 1899, before the holidays, I think.

Q. And who informed you of that? A. My uncle, Mr. Taylor.

Q. Is Mr. Taylor's wife your aunt? A. Yes, my mother's sister.

Q. Who informed you that you had been appointed to a position in the Fort Plain postoffice? A. He informed me that he understood that I had been appointed.

Q. Did he tell you where he got his information? A. No, sir.

Q. What conversation took place between you and your uncle and you at that time further than you have stated? A. I do not recollect the conversation.

Q. Did he suggest or did you suggest that you were to go to Fort Plain? A. No, sir; I do not recollect whether there was anything said about my going to Fort Plain or not.

Q. You were living in Fredonia at that time? A. Yes, sir.

Q. As a matter of fact you never did go to Fort Plain, did you? A. No, sir.

Q. You never were at Fort Plain, were you Miss Clark? A. I don't think so.

Q. At any time did you have any conversation with your uncle on the subject of your going or not going to Fort Plain? A. I do not recollect whether I did or not.

Q. You were transferred to the Fredonia office at about what time, Miss Clark? A. On the 2d of May, 1900.

Q. And you commenced working in the Fredonia postoffice when? A. On the 3d of May, 1900.

Q. And you continued working there regularly down to what time? A. To the first of August, 1903.

Q. Are you able to state to the Committee what your salary was during the period you have mentioned? A. My salary when I commenced work at Fredonia was \$600.

Q. And how long did it continue at \$600? A. I don't know that I can tell you.

Q. Could you tell pretty nearly, Miss Clark? A. No, I don't think I can; I have never kept a memorandum.

Q. Very well; subsequently it was raised to what figure? A. It was raised to \$700.

Q. And then again? A. I think it was raised to \$800; it was either raised to \$700 and then \$800 a year, or to \$800 the first time; I am not sure about that.

Q. Were there several successive raises in your salary, Miss Clark? A. The next was \$900, and the next was \$1,000.

Q. And that was the limit? A. Yes, sir.

Q. How did your uncle, Mr. Taylor, pay your salary to you? A. He paid part of it in money, in cash, and the remainder in a check.

Q. Did you keep any account with your uncle of the payments which he made to you? A. No, sir; I do not understand what you mean.

Q. Did you keep a cash account? A. No.

Q. Have you ever kept such an account? A. No, sir.

Q. Did you ever make any memoranda or entry of the amounts paid to you by Mr. Taylor in money? A. No, sir; I knew what I was to have every month, and when I got it that was all that was necessary.

Q. And you have no record of it whatever? A. No record whatever.

Q. Since you ceased to be a regular clerk in the office you have been employed at intervals as substitute clerk, have you? A. Yes, sir.

Q. And about what part of the time have you been thus employed? A. I am employed during the summer vacations when the clerks are away on their annual vacations and during the holidays for about two weeks, 15 days, and during the circular season.

Q. That is when? A. This year it was from the tenth of February to the tenth of March.

Q. What do you mean by circular season? A. At certain times in the year the nurseymen at Fredonia send out circulars. Well, in the spring they send out a great many circulars and it requires extra help in the office—catalogues and circulars.

CROSS-EXAMINATION (Mr. Carr read the questions, Mr. Stanchfield the answers, as follows):

Q. You are an unmarried lady? A. Yes, sir.

Q. And where was your home in Fredonia? A. 60 West Main street.

Q. With whom do you live? A. With my mother.

Q. Is your father dead? A. Yes, sir.

Q. Are there any other children? A. No, sir.

Q. You are the only child? A. The only child.

Q. Mr. Taylor, who was appointed postmaster, was a relative of yours? A. Yes, sir.

Q. And was there any talk between you and him with reference to your going into the postoffice to take charge of the finances of the office? A. Yes, sir.

Q. Now, about when did you and he talk that over, can you tell? A. It was about the time of my appointment.

Q. About the time of your appointment? A. Yes.

Q. Your appointment was in December, 1899, at Fort Plain, is that right? A. I should say about the time I went to work in the office he told me what he desired me to do in the office.

Q. You had not had any chat with him or talk with him before you started to work there? A. Not very much.

Q. If you had not, I would like to have you tell us just what was said about it before you were appointed at Fort Plain, upon the subject of what you should do in the office to earn your living. A. He had thought that he would like to have me as money order clerk in his office.



Q. Now, I take it it was necessary for you to work to support yourself and mother? A. Yes, sir.

Q. Had she practically any means of support except through you? A. No, sir, very little.

Q. You were appointed first at Fort Plain? A. Yes.

Q. And did or did you not go to your uncle and tell him from time to time that you were ready to go to work? A. Yes, sir.

Q. Did you talk with him from time to time as to when any word would be received or likely to come as to when you were to go to work? A. I was very anxious to go to work.

Q. But it was not until May, 1900, that you were transferred from Fort Plain to Fredonia? A. May, 1900, May 2d.

Q. Now, did you ever have any talk with your uncle as to the the reason why you had to be appointed at Fort Plain and then transferred to Fredonia? A. Yes, sir.

Q. You talked that over with your uncle, is that the idea? A. Yes, sir.

Q. Was that about the time your appointment was made? A. Yes, sir.

Q. You commenced actual work at Fredonia May 3, 1900? A. Yes.

Q. And you remained there until August, 1903? A. Yes, sir.

Q. As clerk in the money order department? A. Yes, sir; I did all the money order work when I was in the office, all of the register work, and taking charge of the addresses, filing them for forwarding letters.

Q. And your salary from time to time was raised from \$600 up to \$1,000? A. Yes, sir.

Q. How much money in volume did you handle there in a year? A. The money order business increased after I took charge of it; the first year that I was in the office the money order business was about \$60,000. The last year it was over \$90,000.

Q. Over \$90,000? A. Yes, sir.

Q. Did all of this money pass through your hands? A. Yes, sir; I had entire charge of it when I was there, except at my meal hours.

Q. And was the office inspected from time to time by inspectors from the Postoffice Department in Washington? A. Yes.

Q. Did they go over your accounts and take inventories of the condition of the office? A. Yes, sir.

Q. What would you say as to whether or no without exception your accounts of the moneys of that office were found to be correct? A. Always.

Q. This raise in your salary in proportion to the volume of business was in accordance with the usage of the Postoffice Department? A. I don't think so.

Q. You don't know about that; did you say you don't think so or you don't know? A. I don't think so.

Q. What I mean by that is whether you did not know that your salary was increased from time to time in proportion to the increase of the volume of the business that the office did; that is, the amount of work? A. Yes, I thought that it was.

Q. That is what I mean by my inquiry? A. I thought I was entitled to more salary than I was drawing.

Q. The business increased as you stated from \$60,000 to \$90,000? A. Yes, it increased from \$60,000 to \$75,000, and then to over \$90,000. I believe it was about \$94,000 the last year.

Q. Now, either at the time when you secured your original appointment at Fort Plain or at any time during the period covered by your clerkship, did you ever have any talk with Judge Hooker in reference to it? A. No, sir.

Q. Not a word? A. Not a word.

Q. Did you ever, Miss Clark, pay to anyone, Judge Hooker, or your uncle, or any other person, any proportion or percentage of your salary as a consideration of your appointment? A. No, sir.

Q. And never had any talk or arrangement on that subject? A. Not at all.

Q. You as a matter of fact were never paid anything by the postmaster at Fort Plain? A. No, sir.

Q. And for this period of time, Miss Clark, from December, 1899, to May 3d, 1900, you were never paid anything by anybody? A. No, sir.

Q. Your salary and your pay commenced when your actual work commenced, May 3d, 1900? A. Yes, I was paid on June 1st, the first salary that I received.

RE-DIRECT EXAMINATION by MR. COMAN:

Q. You never talked with your uncle, did you, about going to Fort Plain? A. No, sir; I do not recollect that I did.

Q. You never had any expectation of going to Fort Plain, did you? A. The Department did not order me to Fort Plain, and the postmaster did not send for me.

Q. Just answer my question; you never did have any expectation of going there, did you, or intention of going there? A. I should have gone if they had sent for me.

Q. Yes, but did you expect to go to Fort Plain? A. I don't think I thought about it at all.

By MR. WEMPLE:

Q. With reference to your appointment to Fort Plain and your appointment to Fredonia, all the transactions you had were with your uncle, Mr. Taylor? A. Yes, sir.

Q. Did you have any conversation with Judge Hooker; he was not connected with these transactions? A. Not at all.

By MR. CAHN:

Q. You were acquainted with Judge Hooker? A. Yes.

Q. Had known him for how long? A. Oh, ever since I had lived in Fredonia.

Q. Before you had this appointment, I asked this question because you stated you had to employ yourself to make a living, had you any other employment? A. Yes, sir.

Q. Did you discontinue that other employment when you took this position? A. Yes, sir.

Q. And during all the time you held this position in the postoffice you had no other employment? A. No, sir.

By MR. STANCHFIELD:

Q. You drew no salary whatever until you had actually begun work at Fredonia? A. No, sir; no salary until I had worked a month in the postoffice.

By MR. CAHN:

Q. What I want to ask you is—I don't want to be misunderstood—I refer to the time when you got the appointment, not to the time when you went to work, did you give up your other employment as soon as you received this appointment at Fort Plain? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. So that during the time prior to the time that you were actually employed in the postoffice you were not employed doing anything else? A. No, sir, nothing, except at home; I was not employed in any office at that time.

By MR. STANCHFIELD:

Q. Were you in fact, Miss Clark, a stenographer or typewriter?

A. No, sir; I understand using a typewriter, and used one all the time I was in the office, but I am not a stenographer.

Q. You used during the time you were in the postoffice a typewriter? A. Yes, sir.

By MR. FISH:

Q. Where were you employed, Miss Clark, when you were informed of your appointment at Fort Plain? A. Not anywhere, not any office or store or anything of that kind.

Q. Were you doing anything towards earning a living at that time? A. Yes, I had been doing sewing for my friends and such work as that, and copying, and doing such work as that.

Q. Did you continue to do that same kind of work until you actually went into the Fredonia postoffice? A. Not to any amount, because I was expecting to go to work at any time?

By MR. STANCHFIELD:

Q. Where? A. Wherever the Department ordered me.

By MR. FISH:

Q. Had you any expectation as to where they would order you? A. No, sir; I was awaiting their orders.

Q. Did you talk over the matter of transfer with anyone else, excepting your uncle? A. No, sir.

Q. Did you know or were you informed at any time that Judge Hooker had written a letter or letters in your behalf? A. No, sir.

Q. No conversation with anyone about that? A. I do not recollect any.

Q. You would not say whether there was or not, except you do not recollect it? A. No, sir, I do not recollect any.

By MR. WEMPLE:

Q. Did you receive from the Government all the salary to which you were entitled under your contract under the appointment?

A. I received all the salary, yes, that I was entitled to at Fredonia.

Q. Did you apply that salary to your own uses exclusively? A. Yes.

Q. And to the support of your mother? A. Yes.

Q. All of it? A. Yes, sir.

By MR. STANCHFIELD:

Q. Along the line which you did not make quite as full as I wish you would, won't you go a little more into detail as to just the kind of work you were doing before you got the appointment at Fort Plain? A. Yes, sir; I had been sewing for my friends, and in Fredonia I can always have that to do, as I am able to do that work.

Q. And when you say sewing, what particular line? A. Making shirt-waists, children's dresses and ladies'. Sewing for women and children.

Q. It was in that way that you had made your living up until the time of the appointment? A. Yes.

Q. Now, after you received notice of your appointment in December, did you daily expect that you would get some word from the Government putting you at work? A. Yes, sir.

Q. In fact, it did not come until May, 1900? A. No, sir.

Q. Over three or four months you held yourself in readiness to go where they sent you? A. At any time.

Q. And you were willing to go? A. Yes, sir.

By MR. COMAN:

Q. You never passed a civil service examination, did you? A. No, sir.

Q. Did you ever have any conversation with Justice Hooker about any increase in your salary? A. No, sir.

Q. Were you aware that Justice Hooker from time to time was making requests of the Department for an increase in your salary? A. No, sir.

Q. And that he was writing letters to Mr. Beavers in which he said that you would be delighted with what was being done for you, or that in substance? A. No, sir.

Q. That matter never was brought to your attention in any way, was it? A. No, sir. ●

Q. Did you ever know that Justice Hooker made application to the Postoffice Department to pay you for the time in which you were on the rolls at Fort Plain? A. No, sir, I do not think I did; I do not recollect it.

The WITNESS: I do not recollect.

Q. You do not recollect whether he did or not? A. No, sir.

Q. It might have been brought to your notice, might it not? A. Yes, sir.

Q. And if it was, by whom was it brought to your notice? A. By Mr. Taylor.

Q. What is your best recollection as to whether Mr. Taylor did say anything to you on that subject? A. I think I may have asked him if I was entitled to the salary at Fort Plain.

Q. And what did he reply? A. I think he told me that he would find out whether I was entitled to it.

Q. And was anything further said after that on the subject? A. I do not recollect.

Q. You do not recollect whether he did find out and inform you or not? A. No, I cannot recollect about it now.

Q. Did your uncle, Mr. Taylor, tell you from time to time that efforts were being made to have your salary increased? A. Yes.

Q. Did he tell you who were making those efforts? A. He told me he would get my salary increased.

Q. Did he mention the name of any other person as assisting him in getting these increases? A. No.

Q. The date that you went to work at Fredonia was what? A. May 3, 1900.

By MR. WEMPLE:

Q. The other clerks in the office had an increase in salary, didn't they? A. Yes, on the first of July in every year there is a circular letter sent out by the Department asking the postmaster to recommend the clerks who wish their salary increased.

Q. Was your salary increased more in proportion than the others? A. No, sir, it was not; I drew more salary the last year I was there than any other clerk in the office.

By MR. COMAN:

Q. Your salary was increased from \$600 to \$1,000 within what period of time? A. I think two years, but I am not certain.

Q. Easton and Landers had been there with the clerks in the office for how long a period of time? A. I could not tell you.

Q. Several years before you went in there? A. Yes.

Q. And they were competent and efficient clerks were they not? A. I suppose they are.

Q. And do you know what their salary is to-day? A. Yes, sir.

Q. How much? A. Nine hundred.

Q. Nine hundred dollars? A. Yes, sir.

Q. And at the time when your salary was increased from \$600 to \$800 they were still drawing \$600, were they not? A. I think so; I am not sure.

By MR. SCHOENECK:

Q. Did you ever do any sewing for Mrs. Hooker or any other members of the family? A. No, sir.

By MR. STANCHFIELD:

Q. These other clerks had nothing to do with the handling of the money? A. No, sir.

Q. That was exclusively your work? A. Yes; when I was not there the deputy postmaster did the work I did not do.

Q. That was the most responsible work in the office? A. Yes, sir.

By MR. FISH:

Q. Upon what theory did you ask your uncle if you were entitled to salary from the time you were on the payroll at Fort Plain? A. I thought as the Department had appointed me there and I had been ready to go to work that possibly I was entitled to the pay.

●

By MR. COMAN:

Q. Are you able to say when your salary was increased to \$1,000; how long had you been in the office when it was increased to \$1,000? A. I think about two years, Mr. Coman, but I am not sure.

Q. You were there only two years in all, weren't you? A. No, sir; I was there three years; three years and three months.

Q. Were you aware that on January 22, 1902, Mr. Taylor requested the department to increase your salary to \$1,200? A. Yes, sir.



Q. And that was done with your knowledge? A. Yes.

Q. And at that time your salary was how much? A. That was when?

Q. That was January 22, 1902. A. I think my salary was \$900; I won't be sure about that.

Q. Wasn't it increased to \$900 at that time? A. It may be.

Q. When the application for an increase to \$1,200 was made? A. It may be; I am not sure.

MR. COMAN: Page 485.

MR. CARR: I suppose that is because of trying to make some arrangement in regard to a whole lot of figures in Mr. Green's testimony.

MR. COMAN: Yes.

MR. CARR: This will relieve this body from going over long columns of figures. They may not be good in mathematics.

MR. McFARLANE then read the questions and Mr. Stevens the answers from the direct testimony of Frank P. Ball, commencing at page 485 of the printed minutes of testimony taken before the Assembly judiciary committee, as follows:

"Q. Mr. Ball, where do you live? A. Fredonia, N. Y.

Q. What is your age? A. 38.

Q. What is your business? A. Just at present I am out of business.

Q. What has been your business for a number of years past?

A. I have been a ticket agent of railroad and steamship tickets.

Q. Ticket agent for a railroad? A. Yes, sir.

Q. When did you commence the ticket brokerage business at Dunkirk, N. Y.? A. In the fall of '92.

Q. And continued down to what time? A. Well, the time the anti-scalping bill took effect, some time previous to that, a few days; I think that was September 1st, '97. If that is the correct date, of course——

MR. COMAN (interrupting): Is it conceded that is the date?

MR. CARR: Yes, sir, September 1st, '97."

MR. MACFARLANE: I suppose that is conceded now.

MR. CARR: When that law went into effect, yes, sir.

MR. MACFARLANE (continuing):

Q. You then discontinued business until what time, Mr. Ball?

A. Some time between the 5th and 10th of December.

Q. 1898? A. Yes, sir, that would be '98.

Q. Shortly after the decision by the Court of Appeals declaring the so-called anti-scalping law unconstitutional? A. About two weeks after that.

MR. MACFARLANE: Do you want the concession that appears there?

MR. CARR: Yes.

MR. MACFARLANE: It will be conceded it was the 22d day of November, 1898, that the Court of appeals decided that case.

MR. CARR: Yes, held at law to be unconstitutional.

Q. It appears, Mr. Ball, from certain records in this case that on the 11th day of October, 1892, you were appointed a laborer in the Fredonia postoffice. Do you recall that transaction? A. Yes, sir.

Q. The facts you were thus appointed? A. Yes, sir.

Q. Prior to your appointment to that position, when was the subject first brought to your attention and in what way? A. About the appointment?

Q. About the appointment? A. Do you want me to tell where it was, just how it was?

Q. Yes. A. Well, I was driving by Judge Hooker's house and I saw him out in front and I drove up and stopped and asked

him if I could get a position, a clerkship in the Fredonia post-office, and he said he could get me a position in Washington if I would go there, but as I could not leave home on account of my mother's age I told him I would prefer to stay in Fredonia, where I could live,—I knew about what the salaries were of the clerks and I rather be there than go to Washington,—it would be impossible for me to leave Fredonia at that time, and he said that he would,—if I remember correctly he said he would see what he could do.

Q. Was that all you recall now of that conversation? A. Well, I couldn't just now recall any more about it.

Q. When next was the subject brought to your attention,—fix the date of that conversation? A. I could not tell you the date of that, it was some time previous, probably September or August, I could not say which, might have been July; I could not tell you that.

Q. 1897? A. 1898, wasn't it?

Q. 1898 is right. Now, when next was the subject of your appointment to a position in the Fredonia postoffice talked about? A. By any one?

Q. By you with any one? A. Well, I went to the postoffice to get my mail and Mr. Moore told me I had been appointed as laborer in the Fredonia postoffice.

Q. When was that? A. That was about October 11th, I could not tell you the day, I don't know whether it was on that day, it was about that time.

Q. What did you say to Mr. Moore? A. Well, Mr. Moore said to me—do you want that? \*

Q. Yes. A. He told me I had been appointed laborer in the post-office and those duties were now performed,—I don't know whether he told me by a woman or a man, I couldn't say that, but were performed by whichever it was, and those bills when they were paid that he would probably give them to me and I would pay them; I said that I would; for cleaning and scrubbing, such as the work was.

Q. I would like you, Mr. Ball, to fix the date when you resumed your ticket brokerage business a little more definitely, if you can tell us? A. It was between the 5th and 10th of December, I could not tell you the exact date.

Q. You inserted a reading notice in the Fredonia Censor, didn't you, at the time? A. I might have, I don't remember.

Q. Just look at this notice, if you will, and see whether you caused that notice to be inserted in the Fredonia Censor of December 7th, 1898 (showing paper to witness)? A. I probably did, but I don't remember, I undoubtedly did, but I don't remember.

Q. And after looking at that are you able to say whether you resumed business on or before Wednesday, December 7, 1898? A. Well, I am sure it wasn't before the 5th.

Q. Look at the date of the paper and see whether your present recollection is you resumed on or before December 7th? A. I think that is probably the date.

Q. Shortly after your appointment as laborer, was it brought to your attention that your designation in the Fredonia office had been changed? A. Some time after.

Q. To what position? A. Well, I don't remember whether it was clerical or classified, I don't remember the word.

Q. Was it clerkship? A. Yes, sir, the equivalent.

Q. Can you fix that date? A. When I was notified of that?

Q. Yes. A. It was about the time,——

Q. (Interrupting) : About the 21st of January? A. Well, if that is the date, yes, sir.

Q. That seems to be the date on the record; you think it was about that time you were notified? A. Yes, sir.

Q. Who notified you of that change? A. Mr. Moore.

Q. Personally? A. Yes, sir.

Q. Where? A. At the postoffice.

Q. What did he say to you? A. If I remember the word, I think he told me I had been put in the classified service, maybe he said clerkship, I wouldn't say as to that.

Q. Well, classified service, at that time you were engaged in business at Dunkirk? A. Yes, sir.

Q. When Mr. Moore told you you had been put in the classified service, what response did you make to that? A. I don't remember.

Q. Do you remember anything further that was said in that conversation between you and Mr. Moore? A. At that time?

Q. Yes. A. No, I don't.

Q. You continued upon the rolls of the Fredonia postoffice as a clerk until what time? A. Well, the last of December, 1892.

Q. 1902, wasn't it? A. 1902.

Q. The 31st day of December, 1902? A. Yes, sir.

Q. At a salary of how much? A. \$600 per year.

Q. And was that salary regularly paid to you from October 11, 1898, to December 31st, 1902? A. Yes, sir.

Q. By Mr. Moore, and his successor, Mr. Taylor? A. Yes, sir.

Q. Amounting to how much in all, Mr. Ball? A. \$2,532 and some cents, if I remember right.

Q. Seven cents or seventeen cents, was it? A. Well, I couldn't tell you that.

Q. \$2,532 and some cents, that is near enough? A. Yes, sir.

Q. Did you ever perform any services either as laborer or clerk in the Fredonia postoffice? A. No, sir, practically none.

Q. If you ever performed any, state to the committee what they were? A. Well, on some occasions I was in Mr. Taylor's office and talked to him some about bookkeeping, he asked me some questions.

Q. Do you remember what he asked you? A. No, I don't; it was nothing as far as my doing any work, I don't claim to have done it.

Q. In the year 1896, Mr. Ball, did you become interested in an oil venture? A. Yes, sir.

Q. With certain other people? A. Yes, sir.

Q. You entered into a co-partnership with certain other people and purchased some oil property? A. Yes, sir.<sup>6</sup>

Q. Who were the other members of that co-partnership?

MR. MACFARLANE: That doesn't appear to be answered.

MR. MACFARLANE (continuing) :

Q. Mr. Ball, will you state to the committee all that you remember about that oil transaction, who were the parties and what was done in reference to it? A. How I come to go into it first?

Q. Yes. A. Mr. Barker was at that time in the oil business and he came to me and talked to me about a piece of property in West Virginia, and, well, it looked like a pretty good thing, and he asked me to take a share in it and I thought at that time I would close out my business and go into that business, but I didn't; and that was probably in August, and I talked to him more or less and I told him that I wouldn't be able to raise the money and he said, well, he thought I could use my note and probably could use it at the Fredonia National Bank, and I talked with Mr. Green about it and he said he wouldn't take the note without an indorser; and then some time later, Mr. Barker saw me regular, probably once a week, about that property, and he suggested to me that perhaps Mrs. Hooker would indorse for me.

Q. Before you go any further tell us who Mr. Barker was, what his full name was, where he lived and what his business was? A. William B. Barker; lived in Fredonia; he was at that time more or less interested in the oil business.

Q. Now you say that Barker suggested to you that perhaps Mrs. Hooker would indorse your note? A. Well, I couldn't say as to that, whether it was Barker or Mr. Green, but I called at Mrs. Hooker's house and asked her if she would like to indorse the note and then I called again some time later; she said at that time if I remember correctly she would see about it, think about it, and I called some time later and had the note, I don't remember whether I made it out or how it was, but I had the note and she indorsed it; then that note was delivered to the Fredonia National Bank.

Q. By whom? A. By me, if I remember correctly, and applied on my payment on the property.

Q. Discounted? A. Yes, sir, discounted at the Fredonia National Bank; that was some time after the 1st of September, I

could not tell what time, but the note was dated, as I remember, previous to that time.

Q. Well, that note was indorsed by somebody else besides Mrs. Hooker, wasn't it? A. I don't know that it was.

Q. Don't you recall that this first note was indorsed by Judge Hooker? A. I don't, I don't remember that at all.

Q. Do you remember whether you had any conversation with Judge Hooker about indorsing this note? A. I don't; I don't remember.

Q. Who were the members of this partnership quorum and what was the interest of each in this property that was purchased? A. Well, Mr. Barker owned one-sixth and I owned one-sixth; who owned the other four-sixths I could not say; Mrs. Hooker owned an interest in the property, but what interest she owned I could not state.

Q. Are those the only members or the only persons interested that you know of? A. Well, I thought F. R. Greene was, but I don't know that he was.

Q. Anybody else? A. Not that I remember; I don't know who did own the other shares, I don't know as it was sold at the time I went in.

Q. What was the amount of the payment made at the time, in September or October, 1896? A. The whole amount of my share?

Q. The whole amount? A. \$10,000 in cash.

Q. Your share was one-sixth of that? A. Yes, sir.

Q. Was that the amount for which this note was originally given? A. Yes, sir.

Q. \$1,666.66? A. Well, if that is the correct amount.

Q. And are you able to swear now, Mr. Ball, from present recollection, that you took this note to the Fredonia Bank and had it discounted? A. Well, now, I think I did.

Q. Is that as strong as you can put it? A. Well, I am sure I did.

Q. Did you testify before the Grievance Committee of the Bar Association, that you borrowed this money of Mrs. Hooker? A. I

stated it that way; that was an error in the way I expressed it. I never received any money whatever from Mrs. Hooker.

Q. Will you explain to the committee why it was that this note, which bore date the 10th day of September, was not presented by you at the bank until the 7th or 8th of October?

MR. MACFARLANE: There seems to be some misapprehension about that, that is not answered.

MR. CARR: That should not be read.

Q. Do you know what the date of the '96 note was? A. No, I couldn't tell you.

Q. Well, it wasn't discounted until substantially a month after its date, was it? A. It wasn't discounted,—

Q. (interrupting) At the bank? A. It was dated back, it wasn't made at the time; at the time I had the note indorsed it was dated back, whatever the date was, I could not tell you that.

Q. Was it dated back to the date when the agreement was made? A. I suppose that was the date, yes, sir.

Q. Well, Mr. Ball, this note was renewed from time to time, was it? A. Yes, sir.

Q. And subsequently the amount of it was increased to something over \$3,000? A. Yes, sir.

Q. \$3,085? A. Yes, sir.

Q. When was that? A. I could not tell you the date of it.

Q. Well, do you remember whether in December, 1898, the note became due and the amount was \$3,085.60? A. Well, I know there was a time, I could not tell you the date definitely.

Q. How did it occur that the amount of the note was increased, state all the circumstances? A. Well, the operating expenses and improvements, general expenses—that is, we put down some wells, changed the power, we,—

Q. (interrupting) And the various members of the partnership were called upon to contribute amounts? A. Yes, sir.

Q. And where did you get yours, get your contribution? A. Why, I put in some cash,—this wasn't all done at one time.



Q. No. A. I put in some cash from time to time and I also gave my note.

Q. Under the same arrangement, indorsed by Mrs. Hooker? A. Yes, sir.

Q. And discounted,— A. (interrupting) Delivered to the Fredonia National Bank and the avails of these notes were credited to me; that is, applied on my interest.

Q. Now, when those notes were renewed did you always take them to the bank yourself? A. Yes, sir, I always took them to the bank myself.

Q. Did you go to Mrs. Hooker and secure her indorsement personally? A. Yes, sir.

Q. It appears, Mr. Ball, that on the 9th day of December, 1898, this note was renewed for \$3,085.60?

MR. CARR: No, it wasn't renewed for that.

Q. No, it was renewed for \$3,040,—that was the amount due on that date,—\$3,040 substantially. Did you take the note to Mrs. Hooker. Secure her indorsement that day? A. Yes, sir.

Q. Whereabouts? A. At the house, at her house.

Q. Do you remember whether Judge Hooker was present then? A. I don't.

Q. You do remember that he was in town at that time, do you not? A. No, I don't.

Q. Do you remember a reception which was given by Judge Hooker on the 10th day of December, at Fredonia? A. I don't.

Q. Or the 9th day of December, I would say, the same day this note became due? A. Do I remember it?

Q. Yes. A. He might have had a reception, I don't know.

Q. Were you there? A. I was at his house some time at a reception, I don't know when it was, I could not tell you anything about the date of it.

Q. You were a subscriber to the Fredonia Censor, were you? A. Probably, have been for some years, I don't know,—

Q. (interrupting) Were you a reader of that at that time? A. I don't know.

Q. You do remember, do you, that about that time Justice Hooker gave a reception at his house and you were present at it? A. I could not tell the date at all; I remember being present at a reception at his house one time, but I could not tell what year it was in at all.

Q. (showing paper to witness) I call your attention to this article headed "Social Events" in the Fredonia Censor of December 14, 1898, and ask you to read it and then see whether you recall that occurrence? A. (after looking at paper) I wasn't present to that reception.

Q. You were not present? A. No, I never was there when we played cards, never was there to a ladies' reception, not to that one.

Q. You took this note up there the 9th of December to secure Mrs. Hooker's indorsement, did you? A. It may have been the day before that, I could not tell the exact date.

Q. Well, the 8th or 9th? A. About that time it was due.

Q. On the 7th you had resumed your ticket brokerage business at Dunkirk, had you? A. Yes, sir, '98 that is?

Q. Yes, one or two days before you went up there to secure Mrs. Hooker's indorsement to this note, is that right? A. I suppose it is, I could not tell you the exact day of the year I went there; it was probably that day.

Q. The day it became due or the day before? A. Yes, sir.

Q. Did you say anything to Mrs. Hooker about having resumed your business at Dunkirk? A. No, sir, I don't remember the conversation at all; I know I went to the house to have these notes indorsed, I don't remember any particular one, I went there for all of them.

Q. Do you remember now whether upon going to Mrs. Hooker's house to secure her indorsement that day or the day you went, after you had resumed your business at Dunkirk, you said anything to her upon that subject or she to you? A. What subject?

Q. Of your having resumed business at Dunkirk? A. No, sir, I don't.

Q. Are you able to say whether you did or not? A. I don't know, I don't remember the conversation.

Q. Are you able to swear that that was not a subject of conversation between you and Mrs. Hooker? A. I am sure it was not; otherwise from that I could not tell the conversation.

Q. What makes you sure it was not, if you cannot remember the conversation? A. That is the time,—

Q. (interrupting) That was one or two days after you had resumed your ticket brokerage business at Dunkirk? A. Yes, about that; was that the large note?

Q. That was the large note? A. I remember going there; about the only thing I remember saying is that I had quit the oil business, otherwise I don't remember, and the note wouldn't be increased.

Q. You did say you had quit the oil business? A. Yes, sir.

Q. Did you also say you had resumed the ticket brokerage business? A. No, sir.

Q. Swear to that? A. I am sure I didn't.

Q. Tell us something else which was said in that conversation there between you and Mrs. Hooker? A. I don't remember anything else.

Q. But you do remember you didn't say that, anything about the Dunkirk business? A. I know I didn't say anything about the ticket business.

Q. Why didn't you? A. Well, I couldn't say that.

Q. It was then fresh in your mind, wasn't it, it was only two days before you had resumed? A. Undoubtedly was.

Q. And you did say to her that you had quit the oil business? A. Yes, sir.

Q. And Mrs. Hooker was upon your paper for upwards of \$3,000? A. Yes, sir.

Q. Why didn't you tell her you had resumed the ticket brokerage business? A. I don't know.

Q. Do you know whether she knew it or not? A. I don't.

Q. After looking at the notice or the article to which I last called you attention in the Censor, giving an account of a recep-

tion at Judge Hooker's on the 9th, do you now recall whether Judge Hooker was at home at that time? A. I don't.

Q. This note has been renewed from time to time until the present date, hasn't it? A. Yes, sir.

Q. And how much is unpaid on it now? A. \$700.

Q. And at least as often as once in three months you went to Judge Hooker's house to secure Mrs. Hooker's indorsement upon this note.

Q. During the period while she remained indorser? A. Yes, sir.

Q. And that was down to January 10, 1900, was it? A. No.

Q. Was Judge Hooker there any of these times you went there to see Mrs. Hooker? A. I don't remember ever seeing him there.

Q. Did you ever see Judge Hooker anywhere? A. Yes, sir, he might have been there some of these times, but I don't remember seeing him there.

Q. What have your relations been with Judge Hooker and his family, what were they at that time and what had they been for years? A. Very friendly.

Q. Were you in the habit of calling at his house in a social way? A. Why, I have been there a few times.

Q. Did your wife go with you? A. No, I don't think my wife ever—she went with me once to a party.

Q. Were you in any way attempting to conceal from Judge Hooker the fact that Mrs. Hooker was indorser on this note? A. No, sir.

Q. You knew Judge Hooker was aware of it, didn't you? A. I suppose he was. No reason why he shouldn't be.

Q. Did you occasionally see Judge Hooker after the resumption of your ticket brokerage business in December, 1898, and until December 31st, 1902? A. I probably saw him.

Q. Well, is there any doubt about it in your mind? A. No, not a bit.

Q. Where did you see him? A. Well, I used to drive; I drove past his house and I have seen him in front of the house or on the veranda.

Q. Any other place that you have seen him? A. I have no doubt but I saw him; I couldn't tell you the place I saw him.

Q. Had you seen him on the cars between Fredonia and Dunkirk? A. I might have.

Q. Do you remember whether you have or not? A. I couldn't give any date, I probably did.

Q. What is the common mode of transportation from Fredonia to Dunkirk? A. Well, electric cars run.

Q. Electric cars? A. Yes, sir.

Q. And in order to get from Fredonia to Buffalo, you go to Dunkirk and take the steamer there? A. Yes, sir.

Q. That is the only way, isn't it? to go from Fredonia to Dunkirk? A. Oh, no; there is a train runs.

Q. Train runs where? A. On the railroad.

Q. Steam railroad? A. Yes, sir.

Q. Runs from Fredonia to where? A. It runs from Dunkirk to Titusville by way of Fredonia.

Q. But the ordinary and usual way of getting from Fredonia to Buffalo is by way of Dunkirk in trolley cars, isn't it? A. No, sir, not for me.

Q. What is the usual way? A. I generally went home in the evening on the train.

Q. I am asking you now, from Fredonia to Buffalo, not from Fredonia to Dunkirk. A. Excuse me. Well, there is three railroads and two depots.

Q. At Fredonia? A. You said Dunkirk to Buffalo I thought.

Q. Let us understand each other. What is the usual and ordinary way of getting from Fredonia to Buffalo? A. You can go to Dunkirk on the train or on the trolley car. The usual way for people who live down street near the trolley car is to go that way, and people that live near the depot go more or less on the train.

Q. And they take the steam railroad from Dunkirk? A. Yes, sir.

Q. Do you remember whether or not Judge Hooker was in the habit of frequently making these trips from Fredonia to Buffalo? A. I don't know.

Q. You don't know? A. No, sir, I don't.

Q. You have seen him sometimes on the trolley car, haven't you? A. I have, undoubtedly.

Q. When you were going to or returning from your business in Dunkirk? A. I don't know that I ever rode on the trolley car with him; the chances are I did, but I don't remember. I couldn't say that I ever rode on the trolley car when Judge Hooker was on it. He had horses and drove more or less.

Q. Well, how frequently did you drive by Judge Hooker's house? A. Drive by Judge Hooker's house with my horses?

Q. Yes. A. I don't ever remember driving there at all except the time I drove by there.

Q. Go on and finish your answer. A. I drove by there. I don't ever remember driving to his house.

Q. Did you ever stop there? A. No, sir, not that I remember of. I wish to state right here, that I lived near the depot and always came home on the train at night. I didn't ride on the trolley cars.

Q. The steam railroad? A. Yes, sir.

Q. How did you go in the morning? A. I generally went on the trolley car or drove.

Q. Where did Judge Hooker live with reference to depot? A. Which depot, the Fredonia depot?

Q. Yes. A. He lived probably a mile from it.

Q. How near the trolley? A. Right on the trolley.

Q. Right on the trolley line? A. Yes, sir. ●

Q. And the trolley cars from Fredonia to Dunkirk ran exactly in front of your office in Dunkirk, didn't they? A. It turns right there; the corner is right there.

Q. Did you have a sign there? A. Yes, sir.

Q. How did that sign read? A. "F. P. Ball, Ticket Agent."

Q. Large letters, conspicuous sign? A. The sign was about 8 foot wide and said "F. P. Ball" at the top and "Ticket Agent" at the bottom.

Q. How far was that from the railroad station in Dunkirk? A. From which station.

Q. Well, any station. A: It was three quarters of a mile from the Pennsylvania and Nickle Plate station and two or three hundred feet from the Lake Shore station.

Q. Almost across the street from the Lake Shore station? A. No; it was across an open square.

Q. How far from the street-car track? A. My office?

Q. Yes. A. The car turned right in front of my office in the middle of the street.

Q. How many feet would you think it was from the street-car track to your office? A. I don't know how wide the street is.

Q. Thirty or forty feet? A. Yes, all of that.

Q. Now, Mr. Ball, I suppose that at some time after your appointment to this position in the Fredonia postoffice you talked to Judge Hooker about it? A. Sometime after the appointment?

Q. Yes. A. Yes, sir.

Q. When was that first? A. That was soon after I was appointed there.

Q. Where was it? A. If I remember correctly it was on the street.

Q. What was said between you and Judge Hooker at that time? A. I told him that I would like to go to Buffalo, and asked him if I could be transferred from the Fredonia postoffice to Buffalo.

Q. Right here—was that before or after you resumed business in Dunkirk? A. If I remember right that was on election day after I was appointed, and he said at that time I could not.

Q. Was that the first time that you had ever talked to Judge Hooker about this since your appointment? A. That if the first time I remember talking to him. Yes, sir.

Q. Did you ever go to Judge Hooker and thank him for securing your appointment? A. I think I wrote him a letter and thanked him.

Q. Do you remember whether you did or not? A. I am sure I did.

Q. Where did you address that letter to? A. I addressed that letter to Fredonia.

Q. Where did you write it, at Dunkirk or Fredonia? A. I wrote it in Fredonia, in the Hotel Columbia.

Q. Well, the next time you saw the Judge, did you take occasion to thank him personally for having secured for you this appointment? A. I don't remember.

Q. Have you told now all the conversation you do remember that took place between you and Judge Hooker at that time on the street, Election Day? A. Will you (stenographer) read it to me?

Q. State it over again, the whole conversation. A. Just as it was?

Q. Yes. A. I asked him if I could be transferred to Buffalo. He said at that time I could not, and I told him I would like to go to Buffalo to live.

Q. What did you give him as a reason for wanting to go to Buffalo? A. What reason?

Q. Yes. A. I don't remember the reason I gave.

Q. Told him the work was too hard at Fredonia for you? A. No, I didn't say that.

Q. What did you say? A. I told him I would like to go there to live, and secure a position in the postoffice in Buffalo, and he told me at that time that it would be impossible to do it. He says, "Perhaps later it can be done."

Q. Did he say why it would be impossible? A. I don't remember that he did. I believe he told me that the reason was, or else I knew it, I couldn't say, at that time that the office was not—I was not subject to transfer, not in that service.

Q. Not in the classified service? A. Yes, sir.

Q. Anything said about his getting you in the classified service? A. He said that perhaps he could arrange it, that he would see about it later if I could be.

Q. Now, see if you can't think of something else that he said there, Mr. Ball? A. I don't remember.

Q. Did the Judge ask you how you were getting along with your work? A. I don't remember.



Q. You don't remember whether he did or not? A. No, sir.

Q. Do you remember whether you said anything to him on that subject? A. I don't remember that I did.

Q. You advertised, Mr. Ball, did you not, that a saving of 15 or 25 cents, I don't remember which, could be made upon round trip tickets to Buffalo and return at your office. A. Yes, sir.

Q. Did you sell a good many of these tickets to people traveling between Dunkirk and Buffalo? A. Not a great many. What would you call a good many, five a day?

Q. Well, about how many; did you have quite a trade in them or not? A. Oh, five—I think it would average about five a day.

Q. Did Judge Hooker ever buy any of these tickets from you? A. I don't ever remember selling him a ticket to Buffalo.

Q. Do you remember that Judge Hooker was ever in your place of business in Dunkirk? A. I don't think that he ever was.

Q. You had all your life, hadn't you, been engaged in work of a clerical nature and office work? A. Yes, sir.

Q. You had never been engaged in the work of what we know as a common laborer, scrubbing out offices and cleaning windows, that sort of work, had you, and sweeping out? A. Well, that is what I commenced to do when I commenced in the bank, so I couldn't say I never done it.

Q. Not since you arrived at manhood and went into business for yourself? A. Yes, sir.

Q. When did you receive your first pay from the Fredonia postmaster? A. I couldn't tell you the date.

Q. I will go back to the subject you were just talking upon. Your manner of dress had been for years something as it is to-day, was it not, Mr. Ball? A. Yes, sir.

Q. And you had never been in the habit of going about Fredonia in the garb of a laborer, had you? A. No, sir.

Q. It appears from the testimony of Mr. Moore that on the first day of November, 1898, he gave you a check bearing date on that day for \$32.80; what did you do with that check? A. At that time?

Q. Yes. A. I couldn't tell you what I done with that check on that day.

Q. Well, Mr. Ball, can you tell me this: whether that check was or was not applied upon and in reduction of this note which Mrs. Hooker endorsed?

MR. MACFARLANE: That is not answered.

Q. I say either the check or the proceeds? A. Why, the proceeds probably were.

Q. You know that they were, don't you? A. I couldn't say the date.

Q. I am not asking you about dates. I am asking you for facts, whether the proceeds of this check went upon this note or not? A. I think the proceeds did.

Q. You haven't any doubt about it, have you? A. I haven't.

Q. Is that true with every one of these checks which you subsequently received from Moore, or Taylor, to the amount of \$2,532.07? A. Well, I reduced that—

THE WITNESS: The proceeds of these checks?

Q. Yes. A. The most of it was.

Q. Wasn't every dollar? A. Every dollar wasn't; no, sir.

Q. Tell me some check, or some part of a check that was not? A. Well, I couldn't tell you, but on some occasions I might have received \$150 and applied \$149 on the note. I don't remember just how that was.

Q. Do you remember whether there was any such instance as that? A. Yes, sir; I know there was times I received back some money, but I couldn't tell you the dates.

Q. How much in all did that amount to according to your best recollection? A. That I received back?

Q. Yes. A. Probably not to exceed twenty-five or fifty dollars during the whole time.

Q. So that with the exception of twenty-five or fifty dollars the entire amount that you received for the salary as clerk and laborer in the Fredonia postoffice was applied on this note in question? A. The proceeds of it.

Q. The checks or the proceeds? A. I reduced the note some more than that, that you understand?

Q. Yes, I understand. In addition to the amount of these checks from time to time you applied various sums, five and ten dollars and other amounts in reduction of the note? A. Yes, sir; up to one hundred dollars.

Q. When you left the postoffice, December 31, 1903, do you remember what the amount of this note was? A. No, sir; I couldn't tell you.

Q. I think it appears from the evidence of Mr. Green that it was nine hundred dollars that was paid; is that about your recollection of it? A. I think it was nearer ten hundred.

Q. Well, the present amount is seven hundred dollars, you say? A. Yes, sir.

Q. In 1903, 1904 and 1905, down to date, you have reduced this note from about nine or ten hundred dollars to seven hundred dollars? A. Yes, sir.

Q. Who first advised you that Mrs. Hooker had been or was about to be released from this note? A. Mr. Green told me it would not be necessary for me to secure her indorsement.

Q. Was that the first time that any talk had been had about her release from that note? That I assume was with reference to the note dated January 10, 1899? A. Yes, sir.

Q. Was that the first time that the subject had been brought to your attention? A. As I remember it, yes, sir.

Q. Prior to that time hadn't anybody asked if you couldn't arrange the matter in some other way? A. Yes; I think that had been spoken to me; I am sure it had.

Q. Who had asked you that? A. Mr. Green.

Q. Then what did Mr. Green say to you on that subject? A. I don't remember. I remember his asking me if I could arrange for that note in some other way.

Q. What did you understand he meant by that, secure another endorser? A. Yes, sir.

Q. Did he speak to you several times about securing another endorser? A. No, sir.

Q. How many times? A. I never remember but once.

Q. In your testimony before the Bar Association Committee, you stated, at page 266: "Well, I was asked at different times if I could arrange that matter some other way"—is that true?

A. Well, I remember once. That is all I remember.

Q. Did he give you any reason why he wanted another endorser?

A. No, sir.

Q. Did he say he wanted an additional endorser? A. No, sir.

Q. He wanted an endorser in place of Mrs. Hooker? A. The only thing he said to me was why I didn't get some one else to endorse that note, if I remember the conversation correctly.

Q. Some one else? A. Yes, sir.

Q. And he gave no reason for it? A. No, sir.

Q. And that is the last you ever heard of it? A. Yes; that is the last I ever heard of it.

Q. When Mrs. Hooker was released from this note he didn't ask you to get another endorser? A. No, sir.

Q. Mr. Ball, in the hearing before the Bar Association Committee, at page 258, you are recorded as having testified thus: "Q. Was that money which you had on hand or did you have to borrow it? A. I borrowed it" (speaking now of the original investment). "Q. When did you borrow this money? A. I borrowed that money of Mrs. Hooker."—did you testify to that before the Bar Association Committee? A. I expressed it in that way.

Q. Then follows this testimony: "Q. Did you have any conversation with her? A. Yes, sir. Q. Did you give her your note for it? A. Yes, sir. Q. What was the amount of that note? A. It was about \$1,700, might have been sixteen hundred dollars and something, might have been seventeen hundred dollars and something, I could not tell you, because I don't remember it now"—did you testify to that? A. Yes, sir; I suppose so.

Q. And on page 260 did you testify to this: "Q. Had it been renewed from time to time? A. Yes, sir. Q. To Mrs. Hooker? A. Yes, sir"—did you testify to that? A. I did; but that was a mistake.

Q. Did you testify to this on page 261: "So you borrowed that additional thirteen hundred dollars of Mrs. Hooker to make up this shortage in the operating expenses of the property? A. Yes, sir. Q. And gave her your note? A. Yes sir." A. I expressed it in that way but that is not the way of it at all.

Q. And again, on page 262, did you testify to this: "Q. And that note was given to Mrs. Hooker for money borrowed of her? A. Yes, sir." A. I don't remember. If it is down that way that is what I said.

Q. And again on page 263: "Q. Can you tell where you got the money? A. I can tell where I got part; I had an account in the Fredonia National Bank." That is the money you paid on the note—I will waive that question.

MR. MACFARLANE: That question is waived, evidently.

MR. CARR: Yes, sir.

Q. Now you testified at least three different times before the committee that you borrowed money of Mrs. Hooker, didn't you? A. I expressed it that way, but it was not the way of it. I told how it was at that time, that she endorsed the notes.

Q. You mean you told the Bar Association Committee how it was? A. Yes, sir; that these notes were discounted at the Fredonia National Bank.

Q. Did you tell the Bar Association Committee that? A. I think I did. I might not have expressed it in the very language which I have done now, but that was the way it was done, these notes were endorsed and I received the proceeds from the Fredonia National Bank.

Q. When you said that you gave the note to Mrs. Hooker didn't you mean that you delivered it to her? A. No, sir; I did not. I mean her endorser.

Q. Is that the impression that you intended to convey to the Bar Association Committee, that you borrowed this money of Mrs. Hooker and handed the note to her, delivered it to her? A. I never received one dollar of Mrs. Hooker.

Q. No, no; read the question, Mr. Stenographer. (Question repeated.) A. I didn't intend that they should understand it that way.

Q. What is that? A. I didn't intend that they should understand me that way, although I said that I borrowed the money of her, but I borrowed the money of the Fredonia National Bank.

Q. Mr. Ball, you have stated in substance that all of these checks, substantially all of them, were in reduction of this note?

MR. GOODRICH: The checks or proceeds?

Q. The checks or proceeds; these checks were all deposited in the Fredonia National Bank, were they not? A. They were all put in the Fredonia National Bank, yes, sir.

Q. Did you keep your regular account in the Fredonia National Bank, your business account? A. No, sir.

Q. Where did you keep it? A. I kept it in the Merchant's National Bank, in Dunkirk.

Q. What was the purpose of this account which you kept at the Fredonia National Bank? A. Well, I think I had probably always had an account at the Fredonia National Bank, not a large balance, but had an account there.

Q. An inactive account? A. Yes, sir; an inactive account.

Q. Except as it related to this note in question? A. No, not entirely.

Q. Well, largely so? A. Yes, sir.

Q. Was it inactive with respect to everything except this note and another note which you were carrying there? A. No, sir.

Q. Well, what else? A. It probably changed twenty-five times a year, charges and credits otherwise from these notes?

Q. But no part of that account related to your business at Dunkirk? A. No, sir.

Q. Was this Mr. Barker whom you spoke of in connection with the oil matter, the same Mr. Barker who was postmaster prior to Moore's incumbency of the office? A. Yes, sir.

Q. With whom did you make your agreement to purchase your

interest in this oil property? A. I agreed to take it from Mr. Barker.

Q. Did you have any writings in relation to it? A. No, sir.

Q. Any certificate or anything to show for your interest? A. No, sir; not a thing.

Q. Who else than Barker did you understand you were purchasing from, who else owned an interest in it that you were purchasing from? A. The original owners of the property?

Q. Yes. A. Now, I don't remember the gentleman's name; I think it was Mr. Snyder of Pittsburgh, but I never saw him; I don't remember his name.

Q. You say these notes were taken to the bank and applied on your interest; who applied them; A. Mr. Green.

Q. How did he apply them? A. The avails went to what I was short.

Q. How did Green get possession of the avails? A. They would discount the note in the bank.

Q. What else was done, anything more than that? A. Well, at times I paid some cash when I wouldn't have enough.

Q. Was this not deposited to your credit in the bank, do you say? A. Not always.

Q. No, this original note of \$1,600? A. To my credit?

Q. Yes. A. No, sir. As I remember the proceeds of that note applied as my payment on that property, I didn't receive the cash. I deposited the note, and the proceeds made my payment.

Q. You deposited the note and the proceeds were applied without any further act on your part? A. Yes, sir.

Q. You didn't give any check for the proceeds? A. No, sir.

Q. What did you have to show for your interest in that oil matter? A. I never had a thing.

Q. What is that? A. I never had anything to show for it.

Q. Anybody on your behalf have anything to show for your interest in that oil well? A. No, sir.

Q. You had simply Mr. Barker's word for it that you were interested in the wells, is that it? A. Mr. Green represented us as

trustees. He was—it was known as the Waverly Oil Company of Waverly, West Virginia.

Q. The money was kept in the bank in that way? A. Yes, sir.

Q. Did you know whether Mr. Green had any stock to show that he had an interest in that, or that he had an interest in your behalf as trustee? A. I don't know that.

Q. Did you ever realize anything when the property was sold for you share? A. When I discontinued it.

Q. Yes, when you dropped out? A. No, sir.

Q. Or at any other time? A. Why, the property was producing, but the proceeds were applied for the expenses.

Q. Did you realize anything in any other way than that? A. No, sir.

Q. What eventually became of your interest in that mine, or that well? A. What became of it?

Q. Yes. A. It wasn't a well; it was twenty-five wells.

Q. Well, whatever it was, what became of your interest in it for which you paid the amount of this note, as you say; what became of that? A. Well, I practically gave it up.

Q. To whom? A. Well, if I remember correctly, I turned it over to the company.

Q. What did you get in return for that? A. I just signed a release. I never received anything for it.

Q. When you say "the company," what company do you mean? A. The other co-partners; I signed a release. ●

Q. Who were the other co-partners? A. Mr. Barker; I couldn't tell you all the partners, and Mrs. Hooker owned an interest in it.

Q. Let me understand; am I correct in this statement, that you paid sixteen hundred and some odd dollars for your interest in these wells, or this company, in order to be a partner there and then you surrendered that without getting any consideration whatever? A. Yes, sir.

Q. And you are still indebted for that balance, or some part of that balance to the bank? A. Yes, sir.



Q. And never got a dollar returned from it? A. No, sir; never a dollar.

Q. Do you know what eventually became of the interest of these co-partners of yours? A. I do not.

Q. Did you ever inquire about it? A. No.

Q. You never realized a cent on it? A. I never did, a cent. Mr. Barker at one time told me I done well by getting out though.

Q. And he had done better? A. He lost more than I did.

Q. He done better by your getting out of it? A. Well, I want to say one thing more; eventually I think he gave it up, too.

Q. Mr. Ball, in 1897 and '98, what were your political affiliations? A. I was a Republican. I voted the Democratic ticket once, the first time Grover Cleveland ran.

Q. In 1884 that would be? A. I couldn't tell you the date of it; it is probably back as far as that.

Q. Is that the only time you voted the Democratic ticket? A. Yes, sir, State or National.

Q. Since 1884 you have regularly voted the Republican ticket, have you, on State and National politics? A. Yes, sir.

CROSS EXAMINATION read by Mr. Carr and answered by Mr. Stanchfield:

Q. Mr. Ball, you are how old? A. I will be 38 in May.

Q. 38 coming May? A. Yes, sir.

Q. And your home has always been at Fredonia? A. Yes, sir.

Q. How long have you known Mrs. Warren B. Hooker? A. 25 years.

Q. Did you know her prior to her marriage to Judge Hooker? A. Yes, sir.

Q. What was her maiden name? A. Miss Abbie.

Q. Had you known her father in his lifetime? A. Yes, sir.

Q. Had he been, during portion of his business career, the president of this Fredonia bank at which you had these business transactions? A. Yes, sir.

Q. And if I recall the evidence in this investigation correctly

there was a time when you were an employee of that bank? A. Yes, sir.

Q. Was that under the administration of her father? A. Entirely.

Q. How many years did you work there? A. A very short time—lacking a very short time of being ten years.

Q. You commenced as a general utility boy? A. Yes, sir.

Q. Performing manual labor? A. Yes, sir.

Q. Cleaning, scrubbing and doing whatever they wanted you to do? A. Yes, sir; and doing the collecting and such as that.

Q. During that period of time did you occasionally see Miss Abbie, before she was Mrs. Hooker? A. Yes, sir.

Q. After her father's death did or did you not know that Mrs. Hooker continued to be a woman of considerable financial responsibility? A. I knew she was; yes, sir.

Q. Now, there came a time in 1896 when, at the instance, I think you told Mr. Coman, of a Mr. Barker, you became interested in this Virginia oil speculation? A. Yes, sir.

Q. Had you ever speculated in oil property before? A. No, sir.

Q. Now, you also, I take it, had some conversation from what you said with Mr. Green? A. Yes, sir.

Q. Green, in 1896, held what official relation to the bank in Fredonia? A. He was cashier.

Q. Did you have chats with him in reference to this oil venture? A. Why, I talked with him on one or two occasions.

Q. Just what was it planned to do with reference to this oil land in Virginia, what was your plan? A. As I understood it, the proceeds of the oil was to apply as payments on the property and the operating expenses.

Q. Before you got to that; you were to buy certain land, weren't you? A. Oh, yes.

Q. Tell us the whole of it; I want to get it on the record. A. Do you want to know how much property we were going to buy?

Q. Whether you were going to buy any or not first; start with your property and tell us how you were to pay for it? A. Mr. Barker talked to me about this property, how many acres it con-

sisted of and how many wells, and the production, and the personal property of the ground.

Q. Now, was it your notion, or design to purchase that oil property? A. Yes, sir.

Q. It was located in Virginia? A. West Virginia.

Q. And of how many acres did that consist? A. It was in two pieces; I should say the total was over 75 acres.

Q. Do you recollect what the purchase price was? A. \$32,000.

Q. And you were to pay for it how? A. Ten thousand dollars was to be paid in cash and the balance was to be paid from the proceeds of the oil produced.

Q. That was the explanation that was made to you at the time? A. Yes, sir.

Q. You took, as I understand it, a one-sixth interest? A. Yes, sir.

Q. For that you gave this note? A. Yes, sir.

Q. Now, did you have talks with Mr. Green about the time that this took place, when you gave the note? A. Yes, sir.

Q. Do you recall whether or no Mr. Green took title to this oil land, as trustee for you and your other co-partners? A. That is the way I understand it.

Q. So that you got no written evidence of an interest in this oil well because the title was in him as a trustee for all of you? A. Yes, sir.

Q. Now, there came a time in this history of that oil transaction when the production of the oil failed to make the payments required of you upon the property? A. The payments and improvements.

Q. Well, payments and improvements? A. Yes, sir.

Q. Then, was an assessment levied upon all of you? A. Yes, sir.

Q. And it was that new assessment that doubled up this note? A. Yes, sir.

Q. Well, in fact, as Judge Goodrich suggested, there were two new assessments, were there, or was there but one? A. Oh, there was more than one.

Q. Perhaps more than two? A. Yes, sir.

Q. After you had given this last note you then say that you told Mr. Green that you were going to drop out? A. Yes, sir.

Q. And you maintained no further interest in it? A. No, sir.

Q. Now, you said to Mr. Cahn that you received a release? A. I told Mr. Green that I would assume no further liability of the debts; that I wanted to stop there and that I would sign a release of my interest in that property.

Q. Did you do it? A. Yes, sir.

Q. Do you recall whether or no you received any paper back from Mr. Green? A. I know I did not.

Q. And when you signed this release of any interest so far as you were concerned in it that terminated your connection with that oil venture? A. Yes, sir.

Q. Leaving you in debt for this note that you had given? A. Yes, sir.

Q. Now, this first note was made some time in 1896 for one-sixth interest, the sixteen hundred dollars? A. Yes, sir.

Q. You told Mr. Coman that Mr. Barker, or Mr. Green, had suggested that Mrs. Hooker perhaps would endorse it for you? A. I think perhaps both of them suggested it.

Q. Did you know at the time, or did they tell you, that she likewise was interested in the business? A. I knew that she was. I don't know that they told me. I knew that she was.

Q. You had ascertained that from some quarter? A. Yes, sir; probably from Mr. Barker.

Q. Now personally you went to Mrs. Hooker to endorse this note? A. Yes, sir.

Q. You don't recall, as I understand you, who drew it up, in whose handwriting, I mean by that, it was? A. No, sir, I do not.

Q. And you asked her to indorse it for you? A. Yes, sir.

Q. After it was endorsed is it your recollection you took it to the bank? A. Yes, sir.

Q. Now, was there any one present at the time you spoke to her or asked her to endorse your note? A. I don't remember.

Q. No one that you can recall? A. No, sir.

Q. Now, before you went there had you any arrangement or talk with Judge Hooker in reference to getting Mrs. Hooker to endorse this note? A. I don't remember of any.

Q. No recollection of ever having talked it over with him? A. No, sir.

Q. Now this note, from time to time, was renewed? A. Yes, sir.

Q. Did you look after it yourself? A. Yes, sir; and paid the interest.

Q. Did you keep track of its maturity? A. Yes, sir.

Q. Did you keep track in a general way of the time when it matured? A. I knew when it would come due; yes, sir.

Q. And with reference to a renewal of it; tell us what you would do? A. I would make a new note and have Mrs. Hooker—I would call at the house and she would endorse it. I paid the interest and received the old note as a general thing.

Q. Where did you go to pay the interest and receive the old note? A. I went to the teller of the Fredonia National Bank.

Q. After Mrs. Hooker endorsed it you took it yourself to the bank? A. Yes, sir; always.

Q. Now, with reference to the time when it was due, I suppose you might go one day, or three or four days before it was due to have a new one endorsed? A. Yes, sir.

Q. You are not able to tell how many days ahead of its maturity you went there? A. No, sir.

Q. Was that the way you continued to continue this loan all the time? A. Yes, sir.

Q. Until she passed off from the paper? A. Yes, sir.

Q. Including both the original note and the large note for something over three thousand dollars? A. Yes, sir.

Q. Now, there came a time, did there not, when you were notified by the postmaster, Taylor, that he had been called upon by the United States Government to convert into the Treasury of the United States all of the money that had been paid you by way of salary? A. Yes, sir.

Q. Now, are you able to fix the time when the postmaster, Tay-

lor, called your attention to that matter? A. It was probably during the month before we paid it; probably in the month of September.

Q. Of what year; it was after you had left the postoffice? A. Yes, sir.

Q. Then you left the postoffice December 31, 1902? A. Yes, sir.

Q. Did you give the postmaster, Taylor, your note for the money that he paid back to the United States Government? A. He either did pay it back that day, or I don't know that he had paid it before I gave him the note; he was to pay it at that time.

Q. Either had paid it or did pay it at that time? A. Yes, sir; that day.

Q. Now, upon that note have you also steadily been making payments since you gave it? A. I paid \$650 on it.

Q. So that it is reduced down to between eighteen and nineteen hundred dollars? A. Well, whatever the amount would be.

Q. (presenting same) I show you a check dated September 25, 1903, on The Merchants National Bank and ask you whether or no that is a check for the moneys that you paid Taylor in excess of the note? A. That is the check, yes, sir.

Q. Making the exact amount of salary that had been paid you and for which the Government had required restitution? A. Yes, sir.

MR. CARR: That was offered in evidence and was marked Exhibit G.

The following is a copy of the same:

"Dunkirk, N. Y., Sept. 25, 1903. No. 715. The Merchant's National Bank, Pay to the Order of M. H. Taylor, Esq., \$32.07, Thirty-two and 07/100.

F. P. Ball."

(Stamped) Merchants National Bank, Dunkirk, N. Y., Oct. 5, 1903.

"Cancelled Paid." Endorsed on reversed side "M. H. Taylor," "Pay any national or state bank or order Fredonia National

Bank, Fredonia, N. Y. Endorsements guaranteed. F. R. Green, Cashier."

Q. So that, as matters stand, the government has never lost a dollar by reason of your employment? A. No, sir.

Q. Now you told Mr. Coman, some time in October, 1898, I think it was, that you had a talk with Judge Hooker with reference to aiding you in obtaining a place in the postoffice at Fredonia? A. No; I was appointed at that time. It must have been previous to that.

Q. The talk was previous to that; can you tell us about when it was that you had your first chat with Judge Hooker in which you asked him to aid you in getting a place in the postoffice? A. I couldn't any more than it was August or September; I could.

Q. August or September of '98? A. Yes, sir.

Q. You were then living at Fredonia? A. Yes, sir.

Q. Was Judge Hooker at that time a member of congress from that district? A. Yes, sir.

Q. Did you know that it was the practice of people who wanted a place under the Federal Government, in that locality, to go to him for aid in that respect? A. Yes, sir.

Q. That was generally understood, wasn't it, in that locality? A. Yes, sir.

Q. When you had this talk with Judge Hooker about helping you to get an appointment in the postoffice, was there ever any talk at that time, or before, in reference to your taking the salary of that place and applying it upon the note upon which Mrs. Hooker had become your indorser? A. No, sir.

Q. Was there ever any talk between you and Judge Hooker at any time or at any place, about your applying your salary or any portion of it in reduction of the indebtedness at the bank where Mrs. Hooker was your accommodation indorser? A. No, sir.

Q. Was there ever any talk at any time or place between you and Judge Hooker upon the subject of your not performing or not intending to perform work at the Fredonia postoffice? A. No, sir.

Q. Did you ever talk over with him the subject of not doing work at the Fredonia postoffice? A. No, sir.

Q. Did you ever, at any time or place, have any talk with Judge Hooker in which you told him that you had paid any portion of your salary upon the note that Mrs. Hooker was on? A. No, sir.

Q. You and Judge Hooker, I take it, then, never discussed that subject? A. No, sir.

Q. Were you ready and willing, Mr. Ball, to render services if you were called upon to do it? A. Yes, sir; I was.

Q. You didn't obtain this place for the purpose of not doing anything for your money? A. No, sir.

Q. You were not asked to? A. I never was asked.

Q. And had you been asked were you willing to act? A. I was; yes, sir.

Q. And one of your desires, if I understand you, was to obtain a transfer to Buffalo? A. Yes, sir.

Q. Had you that in mind? A. Yes, sir.

Q. Wanted to bring it about? A. Yes, sir.

Q. Were you intending to move your family to Buffalo and reside there? A. Yes, sir.

Q. And to work in the postoffice? A. Yes, sir.

Q. Had there other men of your acquaintance gone to Buffalo to work in the postoffice? A. I don't know at that time whether they had or not.

Q. Later, and after your first appointment as a laborer, you became acquainted with people at Buffalo who were engaged in the postoffice service? A. Yes, sir.

Q. Over all this period of time, Mr. Ball, you carried an account in the Fredonia National Bank, in the Fredonia Bank? A. Yes, sir.

Q. Now, every time one of those notes matured you handed in to the bank a new note? A. Yes, sir.

Q. And handed in checks and cash and other evidences of debt, to the bank with your new note? A. Yes, sir.

Q. Those items of course were passed to your credit? A. Not every time.

Q. Generally? A. Well, half and half I should say.



Q. And the old note was charged up against you and surrendered? A. Yes, sir.

Q. When you were sworn as a witness before the committee of the Bar Association, in reading it over I see you were never asked to relate the facts and circumstances under which you obtained this indorsement from Mrs. Hooker? A. I never was sworn.

Q. I mean you weren't asked to relate the circumstances under which you obtained the note and the way in which you got it and what you did with it? A. No, sir.

Q. When you used that answer "I borrowed the money from Mrs. Hooker," was that a conclusion of your own from the facts or did you make a mistake in the use of the word? A. I made a mistake the way I spoke it.

Q. That way you spoke it? A. Yes, sir.

Q. Your attention was not afterwards called to it and you were given no opportunity to correct it? A. No, sir.

Q. You were asked by Mr. Coman as to whether or no Judge Hooker knew of the indorsement of Mrs. Hooker upon this note or these notes of yours; you never talked with him about it? A. No, sir.

Q. And you don't know from anything that he said to you or ever talked with you whether or no he knew anything about it? A. No, sir, I do not.

Q. You had one more talk with reference to the postoffice if I understand you with Judge Hooker in which you told him you would like to be transferred to Buffalo? A. Yes, sir.

Q. These two conversations were all the talks you ever had with him upon the subject of your appointment to the postoffice? A. Yes, sir.

Q. Mr. Ball, at the time when you indorsed this note you were responsible yourself financially—at the time when you made the note and Mrs. Hooker indorsed it? A. There was no time that I wasn't responsible for that note or any subsequent note.

Q. And when you say "responsible" I mean was there any time when you were not financially and pecuniarily responsible for it, able to pay if you had been forced to? A. Yes, sir.

Q. You had property in that locality? A. Yes, sir.

Q. From which you were receiving an income? A. Yes, sir.

Q. And is it the custom at that bank as it is at most banks in the country, to require, where you do not put up a collateral on a note, an accommodation indorser? A. Yes, sir.

Q. And that was what Green meant when he said that your note could not be discounted without an indorser? A. Yes, sir.

Q. Now, after the publication of the so-called Bristow report, you heard of that? A. Yes, sir.

Q. Came there a time when three men, a man by the name of Hudson and a man by the name of Tiffany and a man by the name of Colburn, called upon you in reference to the Hooker matter? A. Yes, sir.

Q. Where did they call to see you? A. They called at my office in Dunkirk.

Q. And about when was it? A. I should say January or February a year ago.

Q. What did they say to you?

MR. COMAN: Mr. President I object to this evidence as incompetent and immaterial. I do this only for the purpose of saving time. These men were absolute strangers to this proceeding; we know nothing about them; and this is an attempt to prove that somebody came to Mr. Ball and tried to bribe him to tell certain facts which they claimed to be untrue concerning Justice Hooker. The evidence was permitted to be given by the committee and we were obliged to call three witnesses, Mr. Hudson, Mr. Colburn and Mr. Tiffany to deny it, which they did, and their evidence is here. It seems to me that it is wholly irrelevant and immaterial to this inquiry, and both that and the evidence of the three witnesses spoken of should be eliminated from this case.

THE PRESIDENT: Objection overruled.

MR. CARR: The question that was read back where the objection was raised was not answered at that time.

By MR. STANCHFIELD:

Q. Were you ever removed from your place in the postoffice department, or did you voluntarily resign. A. I voluntarily resigned.

Q. Without suggestion from any one? A. Yes, sir.

By MR. STANCHFIELD:

Q. You may relate, Mr. Ball, the conversation to which I called your attention that you had with Hudson and Tiffany and Colburn? A. Well, they three came to my office and introduced Mr. Hudson of the Brooklyn Eagle, and Mr. Hudson invited me out to have a drink but Mr. Colburn volunteered that I didn't drink; and Mr. Hudson said that he was not there for a newspaper interview, it was just a friendly chat, as he wished some information concerning the Fredonia postoffice and Judge Hooker's relation with my appointment and the facts.

He said that he and Judge Woodard were bearers at a funeral in Brooklyn and Judge Woodard told him about Mr. Hooker's connection with the Fredonia and Dunkirk postoffice and I told him that I had nothing to say that would affect Judge Hooker in either way. Then Mr. Tiffany—well, one thing further, Mr. Hudson said why he was interested in this thing particularly, that he thought, morally, judges should be very good men and above reproach. Mr. Tiffany—you will have to excuse me from using all his profanity.

Mr. Tiffany said that he understood my wife had signed as security with me on the \$2,500, the money refunded the government. He asked me if she had. I said she had not. Then he said, if I would give up something that would cause, he meant Judge Hooker, to be removed, he would furnish me with a bond that the best lawyer in Chautauqua county, wouldn't cost me a cent, that I wouldn't have to be removed, he would furnish me with a bond that the best lawyer in Chautauqua county, wouldn't cost me a cent, that I wouldn't have to pay the \$2,500 note.

By MR. MEAD:

Q. When was this? A. It is about a year ago but I couldn't tell whether it was January or February.

By MR. STANCHFIELD:

Q. What answer did you make? A. I told him I had nothing to say that concerned—that was anything detrimental to Judge Hooker and that they would have to go somewhere else to get information.

Q. Is that all of the conversation as you recall it? A. That is about as I recall it.

Q. Do you recall the profane language that was used by Tiffany in that talk with reference to Judge Hooker? A. Yes, sir.

Q. Was it profane and vulgar? A. It certainly was.

Q. And applied to Judge Hooker? A. Yes, sir.

Q. And showed malice? A. Yes, sir.

REDIRECT EXAMINATION (Questions read by Mr. MacFarlane, answers by Mr. Stevens):

Q. Who is Mr. Tiffany, what is his first name? A. George E. Tiffany.

Q. Does he live at Fredonia? A. Yes, sir.

Q. And how many years have you known Mr. Tiffany? A. Well, all my life.

Q. What has been his business? A. Undertaker.

Q. And is he yet? A. Yes, sir.

Q. Engaged in that business at Fredonia? A. Yes, sir.

Q. Who is Mr. Colburn? A. He is a miller.

Q. What is his full name? A. Albert N. Colburn.

Q. He lives at Fredonia? A. Yes, sir.

Q. And how long have you known him. A. Always.

Q. And he has always been engaged in that business in Fredonia? A. Yes, sir.

Q. Who is Mr. Hudson? A. He told me he was a representative of the Brooklyn Eagle.

Q. And do you know the facts as to whether he is one of the editors of the Brooklyn Eagle? A. I do not, only from hearsay.

Q. Do you know whether Mr. Hudson was at one time Secretary of the State Board of Railroad Commissioners? A. I know nothing about it.

Q. Were all of these three gentlemen present during all this conversation which you have narrated? A. Yes, sir.

Q. When did this conversation take place? A. I couldn't tell you any more definitely than that.

Q. Well, any more definitely than what? A. January or February, a year ago.

Q. What year? A. A year ago.

Q. 1904? A. 1904.

Q. Do you know whether at that time the question of these charges against Judge Hooker had been brought up before the State Bar Association or not? A. I think they had not.

Q. Or before the Jamestown Bar Association? A. Well, I think the Jamestown Bar Association was at that time.

Q. You think that the matter was then being agitated before the Jamestown Bar Association? A. I think it was about that time, yes, sir.

Q. These people came to your office at Dunkirk, did they? A. Yes, sir.

Q. You say you had known Tiffany and Colburn all your life? A. Yes, sir.

Q. Was this the first time you had ever seen Hudson? A. Yes, sir.

Q. Who opened the conversation with you? A. Mr. Tiffany introduced me.

Q. Introduced you to Mr. Hudson? A. Yes, sir.

Q. Was anybody else present besides you four people? A. No, sir.

Q. What did Tiffany say? A. He said "Frank, this is Mr. Hudson, of Brooklyn, N. Y."

Q. Go on and give me the whole conversation from start to fin-

ish just as it took place, with the omission of the profanity and vulgar language, under the suggestion of the committee? A. Mr. Hudson said he wasn't there for a newspaper interview and then he suggested that I would go out and have something to drink and Mr. Colburn voluntarily suggested that I didn't drink and I asked the gentlemen if they would step into the back room, my office is in the front of the store; and Mr. Hudson said he wasn't there for a newspaper interview, just for as he wished to know the facts concerning the Fredonia postoffice and my connection with Judge Hooker. Then he told me——

Q. (interrupting): Well, did you say anything in response to that? A. I don't remember my saying a word, he done the talking; he said that the first he knew about it was Judge Woodard and he were bearers at a funeral in Brooklyn and Judge Woodard told him Judge Hooker's connection with the postoffice in Dunkirk and Fredonia and that he was there in that interest.

Q. In that interest, is that what you said? A. Well, I couldn't give the exact words; that is what he was there for. Then I said I had nothing to say that would be detrimental to Judge Hooker, and Mr. Tiffany, he said that he understood that my—or he asked me if my wife had went my security for the \$2,500 refunded the government, and I said she had not. Then he said if I would give up something that would remove Judge Hooker that he would furnish me with a bond that the best lawyer in Chautauqua county wouldn't cost me a cent and that I wouldn't have to pay the \$2,500 note.

Q. Did he say who the best lawyer in Chautauqua county was? A. No, sir, he didn't.

Q. Have you now told all that you recall of the conversation? A. Well, I told Mr. Tiffany, I repeated that I had nothing to say that would injure Judge Hooker.

Q. You had told him that before he made this proposition to you, hadn't you? A. I told Mr. Hudson.

Q. In his presence? A. Yes, sir.

Q. Had you told him that you were a friend of Judge Hooker's?  
A. I don't remember, I have no doubt but what I did, I don't know as I did.

Q. When and to whom did you first disclose the fact that you had had this conversation? A. When and to whom?

Q. Yes. A. I don't remember who the first that I disclosed it to.

Q. When is the first that you do remember now? A. I remember telling Judge Hooker.

Q. When? A. Some time after that.

Q. How long after? A. Well, within two weeks.

Q. Long before the hearing was had before the State Bar Association Committee, wasn't it? A. Yes, sir.

Q. And long before you made your affidavit in that case? A. Yes, sir.

Q. Judge Hooker knew, had been informed by you, of this conversation? A. Yes, sir.

Q. Who prepared your affidavit before the State Bar? A. I made a voluntary statement.

Q. The affidavit now, I am speaking of? A. Yes, sir.

Q. Who drafted that affidavit? A. I think Mr. Wade did.

Q. Did you tell Mr. Wade about this conversation? A. I don't remember whether I did or not.

Q. Where were you when you made the statement to Mr. Wade from which he drew this affidavit? A. I made it in writing.

Q. At whose suggestion? A. At whose suggestion?

Q. Yes. A. I don't remember, I think Mr. Wade asked me for the facts.

Q. And you made a written statement from which Mr. Wade drew up this affidavit, didn't you? A. Yes, sir. I did.

Q. Didn't Mr. Wade talk with you about the facts before he drew this affidavit? A. No, sir, he didn't.

Q. You sent it to him by mail? A. No, sir, I delivered it to him.

Q. Where? A. At the Hotel Columbia.

Q. In Dunkirk? A. No, sir, in Fredonia.

Q. Did he look it over while you were there? A. Yes, sir.

Q. Make any suggestions about it, any inquiries about it? A. Why, yes, I think he did.

Q. In addition to the matter which you had written out for him, he asked you questions, didn't he? A. Why, yes, sir.

Q. Before you were examined as a witness before the Bar Association Committee, did you talk with Mr. Wade and Mr. Laidlaw? A. I never talked with Mr. Laidlaw, as I know of, I did see Mr. Wade.

Q. And talked with him about your testimony, I suppose? A. One evening, yes, sir, for a short time.

Q. Did this subject come up then of this conversation with these three men? A. I don't remember.

Q. In answer to Mr. Stanchfield's inquiry, you said that you were ready and willing to go to work in the Fredonia postoffice, did you? A. Yes, sir.

Q. Do you mean by that you were ready and willing to go to work scrubbing floors and cleaning windows? A. Well, I could have done it.

Q. Do you mean, sir, that you were ready and willing to do that? A. I could have done it.

Q. Will you answer my question? A. I would have done it if they had asked me to.

Q. No, the question is, whether you were ready and willing to do it, not what you could have done or would have done? A. Yes, sir.

Q. You were ready and willing to do that work, were you? A. Yes, sir.

Q. Did you say to anybody that you were ready and willing to do that? A. No, sir.

Q. You said to him that you were reading and willing to go to work as a clerk in the Fredonia postoffice, didn't you? A. I don't remember.

Q. Did you ever tell anybody until to-day that you were ready and willing to go to work there? A. Yes, sir.



Q. Who did you tell and where? A. I don't know; I have made the remark that I never was asked to work, but if I had been I would be glad to work.

Q. After it was all over, after the 31st day of December, 1902, was the first time you ever made that remark, wasn't it? A. I don't know but what it was, and I don't know as it is.

Q. Did you ever tell the postmaster or anybody connected with the postal department that you were ready and willing to go to work? A. Yes, sir.

Q. Who? A. I told Mr. Taylor once.

Q. When? A. I couldn't tell you the date of it.

Q. Give us any idea as to when it was? A. No, sir.

Q. Where it was? A. No, sir.

Q. In the postoffice, was it, or out of the postoffice? A. I don't remember.

Q. Just what did you say to him? A. I don't remember.

Q. At any time when you were receiving checks from Moore or Taylor, did you offer your services to them in the postoffice? A. No, sir, I did not.

Q. Do you mean to have this committee understand now, that after you resumed your business as ticket broker at Dunkirk you were ready and willing to go back to the Fredonia office and go to work there? A. I went to Buffalo——

Q. Wait a minute. (Stenographer reads question.) A. I would have went back willingly if they had asked me to work.

Q. And given up your business at Dunkirk? A. Yes, sir, I would.

Q. You said, in answer to Mr. Stanchfield, that you never told Judge Hooker that you were not doing any work there, did you, in the Fredonia office? A. I never remember telling him, no, sir.

Q. You say you never remember of telling him? A. I never told him.

Q. Did you ever tell him that you were doing work there? A. No, sir, I never did.

Q. Did the subject ever arise between you as to whether you were or were not doing work there? A. No, sir.

Q. You said to Mr. Stanchfield, that you never told him that you had applied your salary upon this note; did you ever say anything to him on the subject as to whether you had or had not applied it? A. Never did.

Q. And that subject never arose between you? A. No, sir.

Q. When you had your first talk with Judge Hooker was there anything said as to what your position was to be in the Fredonia postoffice? A. I don't remember; I asked for clerkship.

Q. You remember this affidavit that you swore to, don't you, which was filed with the State Bar Committee? A. Yes, sir.

Q. In that affidavit did you swear to this "we had some talk about a position in the Fredonia postoffice and said Hooker informed me he would see if I could be appointed as laborer in the office," did you swear to that? A. I did, yes, sir.

Q. Was that true? A. I asked for a clerkship.

Q. Wait a minute, was it true that Judge Hooker told you that he would see if you could be appointed as laborer in the Fredonia office? A. It may have been, I won't say.

Q. You said nothing, even this affidavit or in your examination before the Bar Association Committee, about this conversation between you and Tiffany and Hudson and Colburn, did you? A. I think I didn't, I couldn't tell, I don't remember the entire examination.

THE PRESIDENT: The Joint Assembly stands adjourned until 10 o'clock to-morrow morning, and will meet promptly at 10 o'clock.

At the hour of 6 o'clock the President and Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate adjourn until 9.30 to-morrow morning.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon, the Senate adjourned.

WEDNESDAY, JULY 12, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. James Boddy.

The journal of yesterday was read and approved.

The Clerk called the roll and the following Senators responded as present:

Ambler	Cooper	Frawley	Lewis	Raines
Armstrong	Cullen	Gardner	L'Hommedieu	Riordan
Brackett	Davis	Gates	Malby	Saxe
Brown	Drescher	Goodsell	Marks	Stevens
Burr	Elsberg	Grady	Martin	Tully
Carpenter	Fancher	Hasenflug	McCarren	Warnick
Cassidy	Fechter	Hinman	McEwan	White
Cobb	Fitzgerald	Keenan	Page	Wilcox
Coggeshall	Foley	Kehoe	Prime	

Indefinite leave of absence was granted to Mr. Elsberg.

Mr. Grady announced that Senator Allds is paired with Senator Foley.

The hour of 10 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber to meet in joint session.

#### JOINT SESSION—ASSEMBLY CHAMBER.

THE PRESIDENT: The joint session is duly reconvened. Proceed Mr. MacFarlane.

MR. MACFARLANE: Page 533, the first question.

Q. Now, Mr. Ball, you have evidently fallen into a mistake; you didn't vote for Grover Cleveland the first time he ran for President did you? A. Yes, sir, I did.

Q. In 1884, how old were you in 1884, in November, 1884? A. Well, I was born in 1867.

Q. Then, you would have been 17 years old? A. Well, then I didn't vote for him.

Q. So you couldn't have? A. No, that is right.

Q. Well, you didn't, did you? A. Well, the first time I voted for president, I voted for Cleveland. He afterwards ran and I didn't vote for him.

Q. I understand you, Mr. Ball, to say that you have paid \$680

on this note which you gave to Taylor, the \$2,500 note? A. Yes, sir.

MR. CARR: That should be \$650 instead of \$680; that is a misprint.

MR. MacFARLANE: Let it be corrected to \$650.

Q. Give us the dates and the months of the payments which you have made on that note? A. I made that payment November 1st, last year.

Q. In one lump? A. Yes, sir.

Q. Mr. Ball, I understand you to testify in answer to Mr. Stanchfield, that during all the time that this note was in existence you were a man of property, of substantial means, is that correct? A. Yes, sir.

Q. What property did you own in 1898, and from that down to 1902, to December 31, 1902? A. 1898?

Q. Yes, sir. A. I owned a piece of real estate in Fredonia.

Q. Now, before you pass from that, describe that piece of real estate, right in the corporation of Fredonia.

Q. How many acres of land? A. Four acres.

Q. Did you own the fee? A. What's that?

Q. Did you own it absolutely? A. Yes, sir.

Q. Was there any incumbrance upon it? A. I don't think there was.

Q. What do you mean, was there at any time an incumbrance upon it? A. Yes, sir.

Q. When did you buy it? A. Well, 15 years ago, 10 years previous to that, no more.

Q. And what did you pay for it? A. I bought the land—

Q. Now, just answer my question, please, Mr. Ball, if you can; how much did you pay for it?

Q. Answer the question. A. About \$700 to \$1,000, I don't remember the exact amount.

Q. Is that as near as you can tell what you paid for that land? A. Yes, sir.

Q. And did you give back a mortgage to secure a part of the purchase price? A. Yes, sir.

Q. How much was the mortgage? A. I couldn't tell you that.

Q. Was it more than \$100? A. Yes, sir.

Q. Was it more than \$200? A. Yes, sir.

Q. More than \$300? A. I should say about that.

Q. How long before that mortgage was satisfied, if ever? A. It was satisfied as fast as they would accept the payments.

Q. Well, that doesn't give us much information, Mr. Ball, as to when it was satisfied? A. Probably three years.

Q. Three years from the date of your purchase? A. Yes, sir. I couldn't tell the exact date, I don't care to be recorded on that, I couldn't tell.

Q. Can you testify as to whether or not in 1898, this property was free from any incumbrance? A. As far as the purchase price was concerned, it was.

Q. Did you ever give any other incumbrance upon it? A. Yes, sir.

Q. When? A. I couldn't tell the date of it.

Q. Was it prior to 1898, or since? A. About that time.

Q. Who did you give it to? A. I don't remember; I think it was, if I remember right, it was given to my mother for an indorsement on a \$600 note.

Q. And is that note paid? A. Yes, sir.

Q. How long ago? A. Some time in the spring of, May or June of, 1900.

Q. Any other incumbrance have you ever given upon that property? A. No, sir, never.

Q. How did you pay the balance of the consideration; how did you pay any part of the consideration of the purchase price? A. Of the first?

Q. Yes, sir. A. Could I tell you, I bought the property, the conditions.

Q. No, just tell me how you paid, from what you derived the money which you paid upon this purchase price? A. I was book-keeper in the Fredonia National Bank.

Q. And you were drawing how much salary there? A. About \$800 a year, if I remember correctly.

Q. Did you have any family? A. I did at that time, yes.

Q. Of whom did they consist? A. Well, myself and wife.

Q. Any children? A. Well, not just at that time, children born since, perhaps at that time.

Q. Did you have any other means of support except your salary from the bank? A. At just what time please?

Q. In 1898, say? A. I wasn't in the bank in 1898.

Q. Well, from the time when you bought this property? A. Well, I owned the property for nearly twenty years, fifteen years anyway.

Q. But you paid for the property quite rapidly, didn't you? A. Yes, sir.

Q. And did you pay for it out of this \$800 a year that you were getting from the bank, in addition to supporting your family? A. I paid \$400 or \$500 down on it when I got it; that was money I loaned to the gentleman that I purchased the property from.

Q. Money that you loaned to him? A. Yes, sir.

Q. Before the purchase that you had loaned? A. I had loaned it to him and afterwards I bought the property and took the property in payment and gave him a mortgage for the balance.

Q. Now, how did you pay the mortgage, from what sources? A. Well, the mortgage was all paid before 1898.

Q. Yes, I know. A. It was paid previous to 1892.

Q. And it was paid for out of your salary as bookkeeper in the Fredonia National Bank? A. Yes, sir. I want to understand just one thing, Mr. Coman, you are talking about the purchase price of this?

Q. Yes, sir. A. Yes, sir, that is right.

Q. That you say was \$800 or \$900? A. Yes, sir.

Q. Did the money of the \$600 note to your mother go into this land in any way? A. No, sir.

Q. Was that an oil note? A. No, sir.

Q. What was that given for? A. I don't remember now.

Q. Are you familiar with the market value of property in Fredonia? A. Yes, sir.

Q. Have been for how long? A. Fifteen years.

Q. What was that four or five acres of land worth in the market of 1898? A. \$500 an acre.

Q. As against about \$200 that you paid for it? A. Yes, but there was no vineyard on the place when I purchased it.

Q. What made the difference in the value? A. The vineyard.

Q. That you set out yourself after you purchased it? A. Yes, sir, I did.

Q. At the expense of how much? A. \$150 an acre.

Q. And how much did you derive from that vineyard? A. Not less than \$300 a year.

Q. Net? A. Yes, sir.

Q. What other real estate did you own from 1898 to 1903? A. I owned a piece of timber land in Arkwright, seventeen acres.

Q. Where is Arkwright? A. That is south about—this piece is south about four miles from the village of Fredonia.

Q. From Fredonia? A. Yes, sir.

Q. When did you buy that? A. I bought that in 1900.

Q. Of whom did you buy it? A. I bought it of the estate, my mother's estate.

Q. How much was the purchase price? A. The purchase price was \$150 if I remember right.

Q. And was it paid for at the time when the purchase was made? A. Yes, sir.

Q. Fully paid for? A. Yes, sir.

Q. And do you still own it? A. Yes, sir.

Q. Has there even been an incumbrance on it? A. No, sir.

Q. What other real estate did you own during that period? A. I owned a piece of oil property in Sheffield, Pennsylvania. Between what date is that?

Q. Between October, 1898, and December 31, 1902? A. Well, this piece of oil property I owned I lost in 1899, through a tax error.

Q. You lost it in 1899 through a tax sale? A. Well, I haven't fully lost it because there is other property that is the same as this that is in litigation, I don't claim to own it now.

Q. And any other real estate?

By MR. CARR:

Q. Well, did you own it in 1898? A. Yes, I did own it till 1899.

By MR. COMAN:

Q. What other real estate, if any, did you own during that period? A. I didn't own any other real estate during that time.

Q. Of what did your personal property consist during that time?

A. I had a piece of stock, I had some stock in a piece of property in Buffalo, a stock company.

Q. A land company? A. Yes, sir.

Q. What was your interest, the nominal value of your interest?

A. Well, \$200 or \$300.

Q. Did you ever realize anything on that? A. Yes, sir.

Q. How much? A. I own it yet.

Q. Well, have you ever realized anything on it? A. Yes, sir.

Q. What? A. I couldn't tell you. It is free from—well, it is free from any incumbrance.

Q. Have any dividends been paid to you on the stock? A. I think they have, yes, sir, I think I received——

Q. Can you do anything more than "think" you have, do you know whether you have or not? A. If I remember correctly, I received at least \$18 a year upon that property.

Q. How much did you pay in? A. Originally, \$600.

Q. What is the name of that company? A. Maple Grove Land Company.

Q. Do you know where the property is located? A. Yes, sir.

Q. Whereabouts? A. Out Main street in the city of Buffalo.

Q. How far out? A. Just at the city line, just over the city line.

Q. In the city line or outside? A. No, sir, just over, first farm outside the city line.

Q. What other personal property did you own? A. I owned a \$600 interest in a piece at Lancaster, N. Y.

Q. Where is that? A. Well, that is just outside the city of Buffalo. ●

Q. A land company? A. Yes, sir.

Q. What is the name of that company? A. That is a co-partnership.



Q. Consisting of whom? A. Well, sir, there was Hard Bros. and Mr. Howard of Fredonia, I couldn't name the other gentlemen.

Q. What was the entire amount of the investment? A. \$500.

Q. Well, you said you had a \$600 interest in it, I ask you what was the whole capital? A. I mean I had a tenth interest in it.

Q. And the entire amount of capital invested was how much? A. Well, if I remember correctly, it was \$5,000.

Q. Did you ever receive any dividends or returns from that property? A. Yes, sir, I received \$600 in cash for my share of it.

Q. And the matter has been closed up? A. Yes, sir.

Q. So you got back your \$500? A. And \$100 besides.

Q. What other personal property did you own? A. Would you just give me the date that you have reference to?

Q. From October, 1898, to December 31, 1902? A. Why, not especially—why, I always had a stock of tickets when I was in the ticket business.

Q. How large a stock did you carry usually? A. 300 to 1,000, sometimes more, it varied.

Q. What did you do with your tickets during the period when you were out of business? A. I sold them all out. I won't say, Mr. Coman, that I didn't have any other personal property, but I think I did, I can't recall it just at this time.

Q. Were you indebted to anybody during that period of time? A. I had a \$600 note at one time to my mother; that is all that I remember at any time.

Q. And of course you had this \$3,000 note, or whatever it was, as it ran along during that period? A. Oh, yes.

Q. Was that the only indebtedness? A. That is the only thing that I—

Q. Wasn't there another note in the Fredonia Bank during a part of that time? A. There might have been.

Q. Do you remember now whether there was or not? A. I do not.

Q. Are you able to say whether you were indebted in any other

amounts than those two notes during that period of time? A. Except the \$3,000 and the \$600?

Q. Yes. A. I had no other notes in the Fredonia National Bank.

Q. And no other notes outstanding anywhere? A. Not that I remember now.

Q. Were you indebted in any amount for any of these tickets? A. No, sometimes I might have made a note for \$100 or \$150, but that was only just a demand note for a short time.

Q. Were they consigned to you on credit, these tickets? A. No, sir, I paid cash for them.

MR. STANCHFIELD: Well, he hasn't quite said that, has he, Mr. Coman? He said that in October he had quit the oil business.

Q. Let's see, Mr. Ball, what do you say? A. Just give the date of that that you mean?

Q. Now, Mr. Ball, there was a time, wasn't there, when you notified Mrs. Hooker and Mr. Green that you did not propose to continue making any payments on the oil investment? A. I notified Mr. Green of that.

Q. What is the fact as to whether you ever notified Mrs. Hooker? A. At the time, afterwards when I had the note for the total I said from that time on I wasn't interested in the oil business and the note wouldn't be increased.

Q. Had you at that time put into that business all the available cash that you had? A. Into the——

Q. (interrupting) In this oil business? A. No, sir.

Q. When you gave the note for two thousand and odd dollars, did you then put in all the cash which you had at your command? A. What would be the date of that?

MR. CARR: May 18, 1897, as I recollect it.

Q. (looking at memorandum) September 10, 1897. A. No, I didn't; that is, I didn't pay in all, that is the way I understand the question.

Q. Did you borrow some money at that time? A. I can't remember the dates, Mr. Coman, you would have to place it.

Q. Now, at page 261 of your testimony before the Bar Association Committee, it appears that you were asked this question: "Now, did you receive an equivalent for the thirteen hundred dollars more money loaned you—what was the reason for the increase of the note?" and you answered "Why, operating expenses and the improvements to be made, my share of it was—well, I can't tell the exact figures; I paid something like seven hundred dollars in cash and borrowed the balance, and made one note for the whole amount." Now you testified to that, didn't you? A. That isn't the way I intended if I did.

Q. Now explain what you did intend by that statement? A. At different times, what I claimed at that time, from the payments I begun on the oil business, since I begun to that time, I had paid down to that time about seven hundred dollars, not what I paid at that time, I might have paid two or three hundred dollars, I couldn't give that.

Q. You had paid in cash, you mean, about seven hundred dollars at one time? A. No, sir; I mean stringing it along—

MR. FISH (interrupting): Up to that time?

THE WITNESS: Yes, sir; up to that time.

Q. And the balance was represented by those notes upon which you borrowed money at the bank? A. Yes, sir.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. I call your attention, Mr. Ball, to a sentence in your affidavit filed with the bar investigating committee.

Q. In which you said (this is page 82 of the Bar Association Committee Report): "During that time I borrowed some money at the Fredonia National Bank, as I now recollect it, about \$3,300, on my note, endorsed by Mrs. Hooker." Now you made that statement in your affidavit? A. Yes, sir.

Q. And that much refers to the same transaction in which you appear to have said you borrowed it of Mrs. Hooker? A. Yes, sir.

Q. Upon your examination before the association? A. Yes, sir.

Q. Now, isn't it a fact that the first time that you voted for Mr. Cleveland was in 1888, rather than 1884? A. Well, it was my first vote for President.

Q. And it was—I simply want to correct the record—it was apparently in 1888, wasn't it? A. It must have been; yes, sir.

Q. Now you spoke of some oil land that you owned in Pennsylvania, with reference to which there was pending litigation? A. Yes, sir.

Q. Are you interested in that litigation? A. No, sir.

Q. The proceeding then doesn't interest you personally? A. No, sir.

Q. Now, at the time when you had this first talk with Judge Hooker, or at any other time, was there ever any conversation between you with reference to your paying him anything for his services in helping you to get a place? A. No, sir.

Q. Did you, in fact, ever pay him anything for such services? A. No, sir.

Q. When you used the expression in your affidavit that you were informed you could be appointed laborer, did you have a clear understanding of the difference between a laborer and a clerk in the technical sense in which the words were used by the government? A. No, sir; I did not.

Q. One more question. When you were talking with Judge Hooker about going to Buffalo to make that your home, in the event you could be assigned to the Buffalo postoffice, did you look at a house with a view of renting it for your home? A. Yes, sir.

Q. Do you recollect what real estate agent you applied to for that purpose? A. Yes, sir.

Q. Who was it? A. Howard Brothers.

Q. Did they show you a house? A. Yes, sir.

Q. And what was its rental? A. Fourteen dollars a month.

Q. Do you recall the street it was on? A. Yes, sir; on Prospect Avenue, No. 768, part of a double house.

Q. Did you go and look at it? A. Yes, sir.

Q. In Buffalo? A. In Buffalo, yes, sir.

**RE-DIRECT EXAMINATION by MR. COMAN:**

Q. Had you ever said anything to anybody else except Justice Hooker about going to Buffalo? A. I don't know, I don't remember ever speaking to any one else.

Q. The only time you ever spoke to him about it he told you you couldn't be transferred there? A. Not then.

Q. What were you engaging a house for, or trying to, under those circumstances? A. I didn't engage a house at that time; it was after I was put in the classified service, after the Fredonia postoffice was classified.

Q. Was it after or before you were told by Justice Hooker you could not be transferred to Buffalo that you went up there and looked at this house? A. It was after the Fredonia postoffice was classified; that was in, I could not tell you the date of it, I think in April.

Q. Was that the only talk you have testified to with Justice Hooker when you met him on the street? A. Yes, sir.

Q. He had then told you you could not be transferred there? A. At the present time I couldn't be.

Q. Did he tell you whether you could at any time or not? A. He said perhaps later, I think the words he said was "I will see."

**RE-CROSS EXAMINATION by MR. STANCHFIELD:**

Q. Just one thing. When you were upon this big note you hadn't lost by tax sale this real estate located in Pennsylvania? A. No.

Q. At that time what was that real estate worth? A. The value of it?

Q. Yes. A. That was worth twenty-five hundred dollars or more.

Q. Had you been offered that amount for it? A. Yes, sir.

**RE-DIRECT EXAMINATION by MR. COMAN:**

Q. That is the Pennsylvania oil property? A. Yes, sir.

Q. And you have since lost it by reason of a defect in the title, haven't you? A. Yes, sir.

Q. Did you exhibit any search of this property to the man who offered you \$2,500 for it? A. No, sir.

Q. Was the offer made upon the assumption that your title was good? A. Yes, sir.

**RE-CROSS EXAMINATION by MR. STANCHFIELD:**

Q. Now, if you had watched Mr. Coman's question, he asked you whether you lost it owing to a defect in the title or not. Did you lose it through a defect in the title or did you lose it upon a sale for taxes of which you had not received personal notice? A. Well, I could explain the case better——

Q. (interrupting) Explain it. A. I sent two years' taxes to the tax collector of that county, money to pay two years' taxes; I said in my letter "Enclosed find money to pay all back taxes." He returned a receipt for just one year, leaving one year without being paid, the previous year. I afterward paid the taxes on it and knew nothing about it. The place was sold, as I remember, in, in the fall sometime; I was notified of it in December.

Q. You lost that you say through a tax sale and not through a defect in the title? A. No, sir, tax sale; yes, sir.

**RE-DIRECT EXAMINATION by MR. COMAN:**

Q. How much were the back taxes that this property was sold for? A. Just a few dollars.

Q. Did you receive notice of the sale? A. No, sir; I didn't.

Q. Did you afterwards attempt to redeem the property? A. Yes, sir.

Q. Why weren't you able to? A. The time limit had expired.

Q. Did you testify before the Bar Association committee how much this property was worth? A. Yes, sir; I said——

Q. (interrupting) Wait a moment, did you testify about how much it was worth? A. Yes, sir.

Q. Did you testify to this: "Saying nothing about the oil privilege, how much was it worth for any purpose than oil? A. At that time I could have sold it for \$1,200." Did you swear to that? A. That is what I said.

Q. Now you say you could have sold it for \$2,500, do you? A. Yes, sir.

Q. At that time it was worth \$1,200 in cash, did you swear to that? A. I didn't swear to that; no, sir.

Q. You didn't swear to it? A. No, sir.

Q. Did you state that to the committee? A. I did; yes, sir.

Q. Was that true? A. It was worth more than that.

Q. Why didn't you say it was worth more than that if it was worth more than that when you were examined before the committee? A. There never was a time it wasn't worth twelve to fifteen hundred dollars.

Q. Why didn't you state to the committee you had been offered \$2,500 in cash for this property and it was worth \$2,500 at that time, if that was the fact? A. Well, I don't know, I should have.

Q. Is that the only reason you can give? A. Yes.

Q. Can you give me any other reason why you didn't tell the Bar Association committee that this property was worth \$2,500 if you had been offered \$2,500 in cash for it? A. I didn't care to place the price of it too high.

Q. You didn't care to suppress any fact, did you, before that committee? A. No, sir.

Q. It was the actual fact then, wasn't it; you had been offered \$2,500 for it? A. Yes, sir.

Q. Why didn't you say so to the committee? A. Well, I should have, but I didn't.

Q. A single other question or two on another subject, Mr. Ball. In your statement before the Bar Association committee did you state that you were out of business at Dunkirk eighteen or nineteen months, not quite two years, and that you resumed business in the spring of 1899? A. I couldn't tell you, I never give any exact date, I said to Mr. Stevens, if you will read there, I could not tell the exact date of it; I presumed it about that time.

Q. About eighteen or nineteen months? A. Yes, sir; because at that time I thought it was December 31st, or December, that the decision was instead of November. I explained it at that time that I couldn't give him the exact date.

RE-CROSS EXAMINATION by MR. STANCHFIELD.

Q. With reference to this oil land in Pennsylvania, about which Mr. Coman asked you, this was your answer: "Q. Saying nothing about the oil privilege, how much was it worth for any other purpose than oil? A. At that time I could have sold it for \$1,200. It is since worth more. At that time it was worth \$1,200 in cash." Now had you had a standing offer of any particular amount for it? A. No, but a number of times I could have sold it for \$1,200 or \$1,500 during the time I had had it. A short time afterwards oil was produced in that immediate vicinity and it increased in value to that amount, doubled it.

Q. When you fixed it at \$2,500, do you mean the land with the oil privilege? A. I mean the value of the property.

Q. With the oil privilege upon it? A. Yes, sir.

Q. Your answer here was, "saying nothing about the oil privilege" it was \$1,200? A. Yes, sir.

Q. The prospect of obtaining oil there I suppose added to the speculative value of this property? A. It was always considered in an oil vicinity, oil in that vicinity.

Q. Now, did you take legal advice after this property was sold upon the tax sale? A. Yes, sir.

Q. Did you learn that the property had been bought in by a company of which this tax collector was one? A. Yes, sir.

Q. Well, were you or were you not advised that you might have a cause of action against him for fraud in connection with the sale of that property? A. I was advised to wait, as other things would develop, as other property that had been used in the same way, large tracts—

Q. (interrupting) Were you told by your lawyer that if others succeeded in their litigation to set aside the tax sale that you



could follow the same course? A. Yes, sir; that they would all be in one suit.

RE-DIRECT EXAMINATION by MR. COMAN:

Q. What year was this property sold for taxes? A. I could not tell you that.

Q. Tell us as near as you can, before '98 or after? A. Well, I should say it was—I could not tell you. I know the time is expired. I should say it was '97, the time it expired; the time to redeem it in the fall of '99; if I had attended to it a short time before I was advised of that sale I could have had it fixed, the limit is two years.

Q. Now, when you testified before the State Bar Committee that this property was worth \$1,200 in cash, what do you mean to include in that? A. Well, there never was a time I owned that property I could not have received——

Q. (interrupting) No, wait a minute. What property did you mean to include in your valuation of \$1,200 in cash, all of your interest in the property or part of it? A. All of my interest in the property.

By MR. WEMPLE:

Q. Mr. Ball, you have referred to a conversation that you had at your office with Mr. Tiffany, Mr. Colburn and Mr. Hudson; do you know whether Mr. Tiffany was on friendly terms with Judge Hooker or not? A. I know he was not on friendly terms.

Q. What do you say about Mr. Colburn in that regard? A. I should judge from his conversation he was not.

HENRY J. PEMBERTON, called by Mr. Coman, being duly sworn, testified:

DIRECT EXAMINATION by MR. COMAN: 0

Q. Mr. Pemberton, where do you live? A. Fredonia, N. Y.

Q. How long have you lived at Fredonia? A. Oh, off and on for over twenty years.

Q. Where did you live before that? A. Oh, I lived away from there once or twice; I lived at Bradford.

Q. Before you went to Fredonia, where did you live? A. Oil City the last time.

Q. Before that, where did you live? A. Back to Fredonia.

Q. Did you ever live at Perrysburg? A. No, sir.

Q. Are you a relative of Melvin H. Taylor? A. His wife is a cousin of mine.

Q. Mr. Pemberton, it appears from certain records, that have been introduced in evidence here, that on or about the 17th day of January, 1899, you were appointed a clerk in the Fredonia post-office. When did you first learn of that fact? A. Well, I can't tell you.

Q. Was it about that time? A. I guess it was after that awhile.

Q. Had you had any conversation with anybody prior to your appointment? A. Yes, sir.

Q. On the subject of your appointment? A. Not that appointment particularly; no, sir, never.

Q. Well, what conversation had you had on that subject and with whom? A. I don't know I ever had any.

MR. CARR: He says he never had about that appointment particularly.

Q. What appointment had you had conversation about? A. I had simply asked to have something got for me.

Q. Who had you asked? A. I talked with Mr. Taylor about it and Mr. Hooker a little.

Q. When did you have a talk with Justice Hooker about having something got for you? A. Why I have forgotten the year, it was pretty well back.

Q. Was it before January 17, 1899? A. I think so.

Q. Could you tell how long before? A. No, I could not.

Q. Where was the conversation? A. In the village there, Fredonia.

Q. Can you tell us in a general way what the conversation was? A. That is about all there was of it. I talked a little about getting some kind of a place, I didn't designate anything.

Q. A place under the United States Government? A. I supposed so.

Q. And did Justice Hooker say whether he would or would not assist you in getting such a place? A. He said he would see what he could do.

Q. Now, did the postmaster ever notify you you had been appointed to a position there? A. No, sir.

Q. Ever call upon you to do any work there? A. No, sir.

Q. And did you ever know that you had been appointed until your appointment had been revoked in May, 1899, May 8? A. No, I think not.

Q. And of course, you never did any work in the Fredonia office? A. No, sir.

Q. And never drew any paper there? A. No, sir.

Q. Did you know George Cooper? A. I don't; no, sir.

Q. Never knew him? A. No, sir.

Q. Didn't you know George W. Beavers? A. Never.

Q. Did you know any official in the postoffice department at Washington? A. I did not.

MR. MacFARLANE: Do you want to read the statement on page 551.

MR. CARR: Yes.

SENATOR BRACKETT: Mr. President.

THE PRESIDENT: The Senator from the twenty-eighth.

SENATOR BRACKETT: I want to take advantage of the break in the reading for a single moment to call attention to the fact that the rule has not been complied with in that the minutes of the previous meeting have not been placed upon the files of the members as is required by the rule should be done.

THE PRESIDENT: At the opening of the joint session the Chair did not call for the reading of the Journal of the joint session of yesterday for the reason it had not been returned from

the printer. The Chair will now call for the reading of the journal of yesterday, which is just received from the printer and which will be distributed on the desks of the members. If there is no objection, the reading of the journal and its approval, if approved, will be entered upon the records as having taken place at the opening of the session this morning.

The Clerk of the Assembly then read the journal of yesterday.

THE PRESIDENT: If there are no corrections the journal will stand approved as read and copies of the journal will be distributed to the various members of the joint assembly and also to counsel and representatives of the press.

SENATOR BRACKETT: Will the copies that will be distributed contain a transcript of the testimony already taken?

THE PRESIDENT: It will so far as printed. I believe it does not include all the evidence taken up to the time of adjournment, but so far as the printer has been able to print it it will be distributed now.

SENATOR BRACKETT: I hope, Mr. President, you will impress upon the printer the necessity, for the proper and orderly progress of the trial, that we have all of it at the opening of each session if it is a possible thing.

THE PRESIDENT: The Chair did that yesterday; he communicated with the printer and informed him he wished if possible to have all the evidence taken at the previous session on the desks of the members at the opening of the morning session. The desk informs the Chair that the printed record contains only the evidence taken up until the noon recess yesterday. The printer has been unable to furnish but very little of the evidence taken during the afternoon session.

SENATOR BRACKETT: Then, Mr. President, I do regard it of sufficient consequence to bring up the question whether or not the facilities of his office are sufficient to furnish us in com-

pliance with the rule. I have no wish to be technical in the matter, but it is a matter of concern that we should have the testimony taken the previous day upon our files at the opening of court every morning and I wish to have that rule enforced if it is possible to have it done.

**THE PRESIDENT:** The Chair will call the attention of the printer to the rule and the fact it is to be complied with as strictly as possible.

**MR. CARR:** I read the following from the record as to Minerva Jeffrey from page 551:

"Minerva Jeffrey is a daughter of Mrs. Kate Blackmar, of Washington, D. C., at whose residence Mr. Beavers had a room. She is a sister of Georgia Jeffrey, a \$1,600 clerk in the Stamp Division of the Third Assistant Postmaster-General's office; a sister of Fanny L. Jeffrey, employed as laborer, at \$400 per annum, in the Washington city postoffice; a sister of James H. Jeffrey, employed in the Registry Division of the Washington postoffice at \$1,400 per annum, and an aunt of H. Clayton Graff, until recently employed as cancelling machine inspector and at present cashier in the New York postoffice at a salary of \$1,800. She owes her appointment to George W. Beavers."

**MR. CARR:** Shall I read the next there?

**MR. MacFARLANE:** Yes, go right on.

**MR. CARR (continuing):** "She was appointed at Fredonia, N. Y., evidently for the purpose of being covered into the classified service without being required to take the Civil Service examination. On June 15, 1899, she was transferred from the rolls of the Fredonia office and was placed on the rolls of the Burlington, Vt., postoffice."

**MR. CARR:** Now on page 552.

"Miss Jeffreys reported at Burlington, Vt., and performed service there to and including March 31, 1903. While at Burling-

ton her salary was increased to \$1,200 and on April 1, 1903, she was transferred to the postoffice at New York, N. Y., at the same salary. The order transferring her was dated March 11, 1903. She is at present employed in the New York postoffice."

MR. FISH: Where is that statement?

MR. CARR: That appears in the report of the inspector which it was agreed should be excepted as the state of facts in regard to it. Now I assume that is agreed to as the statement of facts in regard to her now.

MR. COMAN: Oh, yes.

MR. CARR: The appointment contained in that record was taken as a statement of the facts in order that it might be put in a concise form.

MR. COMAN: The testimony of Fred R. Green at page 258.

BY MR. COMAN:

Q. Mr. Green, you live at Fredonia? A. I do.

Q. And are the cashier of the Fredonia National Bank, are you?  
A. I am.

Q. And you have been for how many years? A. Upwards of twenty years.

Q. And you are acquainted with the Hon. Warren B. Hooker, justice of the Supreme Court? A. I am.

Q. And how long have you been acquainted with him? A. About twenty years.

Q. During all of that time have you been on terms of intimacy with Justice Hooker? A. I have.

Q. In a social and political way, both? A. Yes, sir.

Q. You know Arthur R. Moore, do you not? A. I do.

Q. And you remember the term during which he was postmaster at Fredonia? A. I do.

Q. During that term did he keep his accounts as postmaster at your bank? A. He did.

Q. Have you with you the books or copies of the books containing that account? A. I have.

Q. You have copies, have you? A. Yes, sir.

Q. Sworn copies? A. Yes, sir.

Q. Will you produce, please, first, Mr. Moore's account? A. Mr. Moore as postmaster?

Q. Yes, as postmaster.

(Account produced.)

Q. Is this paper which I show you a correct statement and accurate transcript of the books of your bank showing the account of Mr. Moore as postmaster from January 5, 1898, to December 2, 1899? A. It is.

(Said account with A. R. Moore admitted and marked Exhibit 96 of March 22, 1905.)

Said exhibit is as follows:

MR. COMAN: I offer in evidence pages 260, 261, 262 and 263, being Exhibit 96.

THE PRESIDENT: It will not be read unless some member of the joint assembly requests it.

A. R. MOORE, P. M.

In Account with

FREDONIA NATIONAL BANK

● Fredonia, N. Y.

1898.	Dr.		Cr.
		Jan. 1 Balance.....	\$178.69
Jan. 5.....	\$198.41	Jan. 5.....	180.00
Feb. 2.....	290.00	Jan. 31.....	241.00
Feb. 16.....	15.00	Feb. 9.....	150.00
Mar. 31.....	135.00	Feb. 23.....	200.00
Mar. 2.....	288.20	Mar. 10.....	160.00
Mar. 14.....	300.00	Mar. 12.....	300.00
Mar. 30.....	10.90	Mar. 26.....	165.00
Apr. 2.....	239.00	Apr. 7.....	200.00

Apr. 6.....	98.18	Apr. 25.....	200.00
May 9.....	216.67	May 13.....	185.00
May 18.....	10.00	May 26.....	164.00
May 18.....	100.00	June 11.....	200.00
June 1.....	316.66	June 27.....	170.00
June 29.....	150.00	July 9.....	210.06
July 2.....	166.66	Aug. 13.....	158.00
July 9.....	125.00	Aug. 17.....	75.06
July 11.....	34.00	Aug. 24.....	146.50
July 16.....	38.25	Sept. 10.....	208.00
Aug. 3.....	200.00	Oct. 8.....	208.57
Sept. 3.....	41.66	Oct. 24.....	125.00
Sept. 7.....	33.33	Oct. 29.....	116.06
Sept. 7.....	66.66	Nov. 7.....	233.22
Sept. 17.....	5.00	Nov. 26.....	230.40
Oct. 3.....	141.65	Dec. 10.....	200.00
Oct. 5.....	125.00	99 24.....	125.00
Oct. 8.....	33.34	Jan. 4.....	865.00
Oct. 14.....	80.06	Jan. 7.....	225.00
Nov. 2.....	213.33	Jan. 12.....	40.00
Nov. 7.....	229.80	Jan. 21.....	350.00
Nov. 9.....	11.66	Feb. 11.....	458.25
Dec. 1.....	5.00	Feb. 25.....	158.00
Dec. 2.....	10.00	Mar. 11.....	300.00
Dec. 3.....	66.67	Mar. 20.....	190.00
Dec. 10.....	82.80	Apr. 1.....	160.00
Dec. 12.....	66.66	Apr. 8.....	200.00
Dec. 15.....	31.65	Apr. 19.....	300.00
99 28.....	300.00	Apr. 20.....	200.00
Jan. 4.....	28.33	Apr. 29.....	175.14
Jan. 5.....	10.00	May 3.....	37.00
Jan. 5.....	33.33	May 8.....	200.00
Jan. 6.....	31.65	May 15.....	200.00
Jan. 7.....	66.66	May 18.....	90.00
Jan. 11.....	125.00	May 31.....	200.00
Jan. 12.....	607.69	June 10.....	235.00
Jan. 12.....	33.34	June 24.....	335.00
Jan. 14.....	21.99	July 15.....	300.00
Jan. 16.....	50.00	July 22.....	200.00
Jan. 21.....	100.00	July 29.....	70.00
Feb. 2.....	10.00	Aug. 10.....	315.00



Feb. 2.....	133.33	Aug. 26.....	250.00
Feb. 9.....	31.66	Sept. 2.....	53.75
Feb. 11.....	27.90	Sept. 9.....	190.00
Mar. 2.....	93.87	Sept. 16.....	240.00
Mar. 4.....	10.00	Sept. 27.....	212.00
Mar. 6.....	29.17	Oct. 2.....	272.85
Mar. 6.....	31.27	Oct. 5.....	160.00
Mar. 9.....	191.91	Oct. 14.....	160.00
Apr. 1.....	145.82	Oct. 23.....	200.00
Apr. 6.....	32.47	Oct. 27.....	135.00
Apr. 8.....	125.00	Nov. 8.....	134.50
Apr. 20.....	50.85	Nov. 9.....	77.25
Apr. 22.....	11.15		
Apr. 22.....	23.98		
Apr. 27.....	175.14		
May 1.....	277.28		
May 1.....	32.85		
May 4.....	10.00		
May 11.....	137.22		
May 17.....	49.20		
June 3.....	186.64		
June 3.....	185.49		
June 5.....	124.65		
June 5.....	50.84		
June 8.....	50.84		
June 10.....	2.01		
June 12.....	32.47		
June 12.....	4.91		
June 17.....	1.70		
June 21.....	15.00		
June 24.....	15.00		
June 28.....	24.96		
June 30.....	2.81		
July 1.....	2.01		
July 1.....	76.39		
July 3.....	33.21		
July 3.....	224.92		
July 6.....	150.00		
July 6.....	18.21		
July 10.....	209.80		
July 11.....	203.25		

July 15.....	66.35	
Aug. 2.....	50.00	
Aug. 2.....	100.00	
Aug. ....	31.66	
Aug. 5.....	1,091.66	
Aug. 14.....	66.66	
Sept. 2.....	239.98	
Sept. 2.....	50.00	
Sept. 5.....	10.00	
Sept. 6.....	87.50	
Sept. 11.....	20.00	
Oct. 3.....	30.00	
Oct. 4.....	296.09	
Oct. 5.....	31.67	
Oct. 7.....	10.00	
Oct. 11.....	150.00	
Oct. 11.....	158.33	
Oct. 12.....	241.90	
Oct. 16.....	100.00	
Nov. 1.....	208.33	
Nov. 1.....	50.00	
Nov. 2.....	115.00	
Nov. 2.....	36.67	
Nov. 4.....	50.00	
Nov. 13.....	135.61	
Nov. 15.....	14.85	
Nov. 22.....	15.21	
Nov. 25.....	100.00	
Nov. 27.....	5.00	
Nov. 29.....	65.21	
Dec. 2.....	161.13	
	<b>\$12,618.12</b>	<b>\$12,618.12</b>

I, GEORGE E. BRITTON, individual bookkeeper of the Fredonia National Bank of Fredonia, N. Y., hereby certify that the foregoing account of A. R. Moore, P. M., is a true and correct copy of the books of said bank from Jan. 1, 1898, to Jan. 1, 1900.

GEORGE E. BRITTON.

STATE OF NEW YORK, }  
 Chautauqua County, } ss.:

George E. Britton, being duly sworn, deposes and says, that he resides in the village of Fredonia, Chautauqua county, N. Y., and that he is the individual bookkeeper of the Fredonia National Bank in said village. That the foregoing transcript and copy of the account of A. R. Moore, P. M., is a true and correct copy of the books of said bank relating to said account.

GEO. E. BRITTON.

Sworn to before me this 16th  
 day of March, 1905.

H. L. CUMMING,  
 Notary Public.

Q. Melvin H. Taylor was postmaster at Fredonia during the term of a little more than four years, was he not? A. Yes.

MR. COMAN: I offer in evidence Exhibit 97, being a portion of page 264, the whole of pages 265, 266, 267, 268, 269, 270 to and including the first four lines on page 282.

THE PRESIDENT: It will not be read unless some member of the joint assembly requests it.

Q. Did Mr. Taylor during his term of office keep an account at your bank? A. He did.

Q. As postmaster? A. He did.

Q. And have you here a verified copy of that account? A. I have.

Q. And that contains an accurate transcript of Mr. Taylor's account during that time as it appears in your book? A. It does.  
 (Admitted and marked Exhibit 97.)

Said Exhibit 97 is as follows:

M. H. TAYLOR, P. M.,  
In Account with  
FREDONIA NATIONAL BANK,  
Fredonia, N. Y.

1899.	Dr.		Cr.	
Dec. 4.....	445.41	Nov. 16.....	150.00	
Dec. 4.....	68.50	Nov. 23.....	350.00	
1900 16.....	57.06	Dec. 2.....	103.00	
Jan. 3.....	379.06	Dec. 6.....	200.00	
Jan. 4.....	311.69	Dec. 9.....	100.00	
Jan. 6.....	76.49	Dec. 16.....	250.00	
Jan. 13.....	84.79	1900 23.....	270.00	
Feb. 1.....	43.06	Jan. 10.....	223.00	
Feb. 1.....	150.56	Jan. 18.....	282.25	
Feb. 3.....	168.07	Jan. 27.....	144.25	
Feb. 3.....	77.50	Jan. 31.....	190.75	
Feb. 7.....	65.22	Feb. 8.....	157.00	
Feb. 7.....	86.11	Feb. 10.....	42.94	
Feb. 7.....	198.06	Feb. 17.....	200.00	
Mar. 1.....	132.20	Feb. 19.....	100.00	
Mar. 1.....	93.32	Feb. 24.....	200.00	
Mar. 3.....	326.66	Mar. 3.....	100.00	
Mar. 5.....	101.10	Mar. 8.....	200.00	
Apr. 3.....	222.23	Mar. 9.....	212.00	
Apr. 4.....	497.80	Mar. 14.....	35.00	
Apr. 5.....	3.33	Mar. 15.....	100.00	
Apr. 16.....	150.00	Mar. 17.....	116.00	
Apr. 30.....	152.47	Mar. 21.....	12.03	
May 2.....	337.90	Apr. 6.....	200.00	
May 2.....	74.18	Apr. 7.....	175.00	
May 3.....	13.33	Apr. 11.....	100.00	
May 14.....	189.56	Apr. 14.....	250.00	
June 1.....	93.68	Apr. 19.....	25.00	
June 2.....	264.02	Apr. 28.....	53.56	
June 2.....	85.16	May 2.....	13.33	
June 4.....	89.44	May 5.....	108.00	
June 6.....	76.64	May 9.....	300.00	
June 20.....	20.00	May 12.....	148.00	

June 29.....	195.88	May 16.....	100.00
June 30.....	206.64	May 19.....	134.00
July 2.....	175.68	June 1.....	40.38
July 5.....	74.18	June 2.....	25.54
July 9.....	30.35	June 8.....	156.00
July 14.....	232.42	June 9.....	100.00
Aug. 1.....	324.31	June 13.....	100.00
Aug. 1.....	167.65	June 16.....	175.00
Aug. 1.....	214.83	June 23.....	133.95
Aug. 2.....	50.54	June 30.....	163.33
Aug. 17.....	84.24	July 12.....	356.00
Aug. 20.....	202.17	July 18.....	93.00
Aug. 30.....	379.06	July 25.....	260.98
Aug. 31.....	147.41	Aug. 1.....	194.74
Sept. 1.....	24.46	Aug. 9.....	226.00
Sept. 4.....	303.26	Aug. 17.....	213.00
Oct. 2.....	462.55	Aug. 23.....	300.00
Oct. 3.....	338.32	Aug. 30.....	165.75
Oct. 5.....	24.46	Sept. 7.....	286.00
Oct. 10.....	101.08	Sept. 17.....	227.25
Oct. 15.....	48.92	Sept. 24.....	315.71
Nov. 2.....	391.69	Sept. 29.....	47.29
Nov. 3.....	50.54	Oct. 11.....	614.19
Nov. 5.....	109.51	Oct. 19.....	214.40
Nov. 10.....	277.99	Oct. 23.....	36.00
Nov. 30.....	285.36	Nov. 1.....	15.58
Dec. 1.....	69.30	Nov. 15.....	381.20
Dec. 3.....	122.28	Nov. 20.....	273.00
Dec. 8.....	81.52	Nov. 23.....	84.28
Dec. 10.....	195.68	Nov. 28.....	133.86
Dec. 15.....	69.30	Dec. 6.....	175.50
1901 31.....	404.33	Dec. 10.....	122.55
Jan. 2.....	168.47	Dec. 13.....	119.00
Jan. 5.....	75.82	Dec. 15.....	69.46
Jan. 2.....	69.36	Dec. 17.....	74.68
Jan. 9.....	202.17	Dec. 19.....	83.93
Jan. 10.....	150.00	Dec. 21.....●.....	61.57
Jan. 30.....	73.19	1901 27.....	264.00
Jan. 31.....	719.02	Jan. 9.....	239.84
Feb. 2.....	25.83	Jan. 12.....	102.78
Feb. 4.....	168.36	Jan. 16.....	322.31

Feb. 5.....	51.67	Jan. 23.....	364.81
Feb. 27.....	416.10	Feb. 7.....	425.91
Feb. 28.....	369.47	Feb. 9.....	192.08
Mar. 2.....	443.08	Feb. 14.....	165.00
Mar. 15.....	100.00	Feb. 20.....	213.09
Apr. 1.....	275.55	Feb. 23.....	114.34
Apr. 2.....	511.38	Feb. 26.....	41.00
Apr. 4.....	316.90	Feb. 27.....	104.25
Apr. 10.....	150.00	Feb. 28.....	52.50
Apr. 15.....	170.00	Mar. 4.....	115.00
Apr. 17.....	35.00	Mar. 6.....	159.73
May 1.....	352.63	Mar. 7.....	53.56
May 2.....	207.03	Mar. 8.....	27.92
May 3.....	247.53	Mar. 9.....	49.09
May 8.....	35.05	Mar. 11.....	23.17
May 14.....	100.00	Mar. 12.....	44.91
May 16.....	72.00	Mar. 13.....	26.57
May 28.....	36.00	Mar. 14.....	22.07
May 29.....	181.04	Mar. 15.....	14.15
May 31.....	49.45	Mar. 16.....	132.56
June 1.....	302.34	Mar. 18.....	27.57
June 3.....	36.40	Mar. 19.....	46.79
June 4.....	134.45	Mar. 20.....	63.80
June 7.....	37.89	Mar. 21.....	44.60
June 15.....	100.00	Mar. 22.....	35.54
June 17.....	70.00	Mar. 25.....	59.10
June 18.....	35.00	Mar. 26.....	54.86
July 1.....	337.66	Mar. 27.....	23.01
July 2.....	231.43	Mar. 28.....	157.39
July 6.....	49.45	Mar. 29.....	36.33
July 9.....	35.05	Apr. 2.....	55.32
July 10.....	150.00	Apr. 3.....	28.19
July 13.....	15.18	Apr. 4.....	30.56
July 15.....	100.00	Apr. 5.....	32.99
July 16.....	105.00	Apr. 6.....	52.55
July 30.....	96.87	Apr. 8.....	127.60
July 31.....	125.00	Apr. 9.....	76.57
Aug. 1.....	210.88	Apr. 10.....	44.32
Aug. 3.....	110.60	Apr. 11.....	32.67
Aug. 7.....	50.54	Apr. 12.....	30.65
Aug. 10.....	101.09	Apr. 13.....	112.61

Aug. 13.....	25.00	Apr. 15.....	94.96
Aug. 15.....	100.00	Apr. 16.....	27.95
Aug. 16.....	105.00	Apr. 18.....	185.71
		Apr. 19.....	23.30
		Apr. 22.....	46.72
		Apr. 23.....	37.64
		Apr. 24.....	48.16
		Apr. 25.....	44.68
		Apr. 26.....	3.01
		May 3.....	156.61
		May 4.....	18.10
		May 7.....	86.30
		May 8.....	53.03
		May 9.....	52.69
		May 10.....	24.47
		May 14.....	214.01
		May 18.....	84.11
		May 22.....	68.40
		May 24.....	25.48
		May 25.....	36.96
		May 28.....	146.06
		June 13.....	269.71
		June 15.....	100.00
		June 22.....	325.28
		June 26.....	92.92
		July 9.....	110.21
		July 13.....	396.50
		July 16.....	53.51
		July 20.....	86.81
		July 24.....	69.04
		July 27.....	47.51
		Aug. 5.....	20.52
		Aug. 5.....	125.00
		Aug. 9.....	262.06
		Aug. 13.....	60.03
		Aug. 14.....	27.55
		Aug. 16.....	30.22
		Aug. 19.....	24.62
		Aug. 20.....	41.51
		Aug. 22.....	37.95
		Aug. 23.....	19.75

Aug. 29.....	35.50	Aug. 26.....	53.87
Aug. 31.....	537.06	Aug. 28.....	40.27
Sept. 3.....	96.87	Aug. 28.....	377.82
Sept. 5.....	95.48	Aug. 30.....	187.89
Sept. 7.....	101.09	Aug. 31.....	31.53
Sept. 17.....	100.00	Sept. 5.....	50.43
Sept. 18.....	105.00	Sept. 5.....	133.10
Oct. 1.....	136.40	Sept. 6.....	36.46
Oct. 2.....	228.82	Sept. 7.....	41.97
Oct. 3.....	148.45	Sept. 7.....	42.71
Oct. 4.....	93.76	Sept. 10.....	141.58
Oct. 5.....	132.12	Sept. 10.....	16.25
Oct. 10.....	130.00	Sept. 12.....	33.90
Oct. 11.....	88.12	Sept. 13.....	39.71
Oct. 15.....	100.00	Sept. 14.....	35.13
Oct. 16.....	70.00	Sept. 17.....	157.26
Oct. 17.....	35.00	Sept. 18.....	47.62
Nov. 2.....	341.97	Sept. 25.....	203.30
Nov. 7.....	283.29	Sept. 28.....	36.25
Nov. 9.....	393.19	Oct. 9.....	111.90
Nov. 15.....	100.00	Oct. 11.....	58.12
Nov. 16.....	105.00	Oct. 12.....	278.24
Nov. 23.....	20.00	Oct. 14.....	142.58
Nov. 27.....	18.50	Oct. 16.....	58.07
Nov. 30.....	358.00	Oct. 17.....	50.75
Dec. 3.....	114.22	Oct. 18.....	134.30
Dec. 4.....	93.76	Oct. 19.....	44.58
Dec. 7.....	296.77	Oct. 22.....	28.71
		Oct. 25.....	248.18
		Oct. 26.....	68.24
		Nov. 9.....	37.53
		Nov. 9.....	356.08
		Nov. 9.....	198.60
		Nov. 11.....	24.30
		Nov. 13.....	37.26
		Nov. 14.....	136.70
		Nov. 15.....	26.23
		Nov. 16.....	73.02
		Nov. 19.....	32.07
		Nov. 21.....	85.42
		Nov. 22.....	25.70



		Nov. 23.....	25.90
		Nov. 23.....	36.97
		Nov. 26.....	33.17
		Nov. 27.....	45.42
		Nov. 29.....	67.76
		Dec. 3.....	158.56
		Dec. 4.....	52.03
		Dec. 5.....	26.50
		Dec. 6.....	49.76
		Dec. 7.....	13.12
		Dec. 10.....	89.15
		Dec. 11.....	49.18
		Dec. 12.....	39.26
		Dec. 13.....	132.64
		Dec. 14.....	39.37
Dec. 14.....	135.00	Dec. 14.....	37.63
Dec. 17.....	35.00	Dec. 17.....	33.40
Dec. 18.....	35.00	Dec. 19.....	388.97
Dec. 19.....	50.00	Dec. 20.....	26.65
Dec. 21.....	20.00	Dec. 21.....	327.78
Dec. 27.....	10.00	Dec. 21.....	35.90
Dec. 28.....	48.92	Dec. 24.....	46.99
1902. 31.....	352.29	Dec. 26.....	103.02
Jan. 2.....	37.50	Dec. 27.....	46.94
Jan. 3.....	55.60	Dec. 28.....	29.41
Jan. 4.....	101.09	Dec. 28.....	60.62
Jan. 7.....	30.00	1902 31.....	66.72
Jan. 14.....	746.28	Jan. 3.....	25.62
Jan. 16.....	170.00	Jan. 10.....	362.57
Jan. 17.....	185.00	Jan. 11.....	73.52
Jan. 18.....	10.00	Jan. 15.....	293.98
Jan. 22.....	12.00	Jan. 16.....	38.65
Jan. 25.....	10.00	Jan. 17.....	33.39
Jan. 28.....	15.00	Jan. 18.....	74.91
Feb. 1.....	644.71	Jan. 21.....	62.35
Feb. 5.....	75.82	Jan. 22.....	55.83
Feb. 6.....	885.81	Jan. 24.....	59.71
Feb. 14.....	100.00	Jan. 25.....	29.00
Feb. 15.....	35.00	Jan. 25.....	236.63
Feb. 18.....	35.00	Jan. 28.....	134.45
Feb. 20.....	10.00	Jan. 30.....	165.14

Feb. 24.....	10.00	Feb. 1.....	222.06
Feb. 28.....	40.00	Feb. 5.....	2.00
Mar. 1.....	389.46	Feb. 7.....	202.75
Mar. 4.....	54.46	Feb. 8.....	64.60
Mar. 5.....	186.71	Feb. 11.....	24.97
Mar. 8.....	35.00	Feb. 13.....	48.42
Mar. 12.....	46.66	Feb. 14.....	157.00
Mar. 15.....	170.00	Feb. 15.....	44.85
Mar. 18.....	45.00	Feb. 16.....	68.56
Mar. 21.....	10.00	Feb. 18.....	26.50
Mar. 22.....	10.00	Feb. 19.....	39.50
Mar. 26.....	10.00	Feb. 20.....	33.60
		Feb. 21.....	139.48
		Feb. 24.....	36.43
		Feb. 25.....	56.22
		Feb. 26.....	51.97
		Feb. 27.....	50.22
		Mar. 5.....	74.69
		Mar. 5.....	70.25
		Mar. 8.....	205.02
		Mar. 13.....	127.80
		Mar. 15.....	106.78
		Mar. 20.....	136.06
		Mar. 22.....	72.76
		Mar. 25.....	61.29
		Mar. 26.....	135.56
Mar. 29.....	25.00	Mar. 27.....	40.13
Apr. 1.....	103.33	Mar. 28.....	48.06
Apr. 2.....	280.55	Apr. 17.....	446.15
Apr. 3.....	140.14	Apr. 19.....	27.21
Apr. 4.....	101.52	Apr. 19.....	249.27
Apr. 5.....	51.67	Apr. 26.....	498.37
Apr. 12.....	150.00	Apr. 29.....	47.37
Apr. 15.....	100.00	May 6.....	93.68
Apr. 16.....	90.30	May 10.....	55.77
Apr. 17.....	20.00	May 15.....	203.05
Apr. 18.....	290.00	May 17.....	85.51
Apr. 19.....	25.00	May 23.....	118.02
Apr. 25.....	300.00	May 31.....	278.31
Apr. 26.....	20.00	June 3.....	36.01
Apr. 29.....	20.00	June 7.....	136.91

May 1.....	318.07	June 11.....	95.37
May 2.....	129.82	June 14.....	110.93
May 6.....	45.00	June 17.....	21.73
May 7.....	49.45	June 19.....	247.76
May 9.....	15.00	June 24.....	190.15
May 15.....	25.00	June 26.....	200.00
May 17.....	141.00	June 27.....	150.14
May 21.....	55.00	July 8.....	207.35
May 23.....	15.00	July 15.....	281.44
June 2.....	102.20	July 19.....	171.66
June 3.....	276.24	Aug. 1.....	148.57
June 4.....	122.20	Aug. 2.....	151.58
June 7.....	18.00	Aug. 6.....	81.90
June 11.....	17.00	Aug. 9.....	183.31
June 17.....	205.00	Aug. 15.....	154.30
June 18.....	35.00	Aug. 16.....	25.20
June 19.....	16.25	Aug. 16.....	161.90
June 24.....	13.79	Aug. 19.....	17.00
June 25.....	200.00	Aug. 20.....	39.98
June 28.....	42.00	Aug. 21.....	13.34
June 30.....	101.48	Aug. 22.....	33.80
July 1.....	313.28	Aug. 22.....	20.16
July 2.....	19.00	Aug. 23.....	123.80
July 3.....	37.50	Aug. 26.....	10.72
July 5.....	150.82	Aug. 27.....	39.55
July 7.....	106.04	Aug. 28.....	30.67
July 12.....	150.00	Sept. 6.....	394.94
July 16.....	140.00	Sept. 6.....	185.61
Aug. 1.....	414.34	Sept. 9.....	19.32
Aug. 2.....	177.99	Sept. 10.....	57.85
Aug. 16.....	200.00	Sept. 11.....	40.72
Aug. 19.....	67.39	Sept. 11.....	29.93
Aug. 30.....	36.60	Sept. 13.....	192.32
Sept. 2.....	36.60	Sept. 17.....	69.18
Sept. 3.....	302.22	Sept. 18.....	88.67
Sept. 4.....	100.00	Sept. 20.....	95.89
Sept. 5.....	37.39		
Sept. 6.....	210.60	Sept. 23.....	161.62
Sept. 11.....	67.39	Sept. 24.....	62.57
Sept. 18.....	130.00	Sept. 25.....	38.02
Sept. 19.....	100.00	Sept. 27.....	85.19

Sept. 20.....	30.00	Oct. 6.....	109.06
Sept. 24.....	110.00	Oct. 7.....	132.55
Sept. 27.....	85.19	Oct. 10.....	147.83
Oct. 1.....	61.39	Oct. 14.....	82.13
Oct. 2.....	238.10	Oct. 16.....	123.82
Oct. 3.....	535.13	Oct. 17.....	29.62
Oct. 4.....	19.00	Oct. 18.....	25.93
Oct. 9.....	35.22	Oct. 21.....	56.15
Oct. 17.....	135.00	Oct. 23.....	57.69
Oct. 18.....	220.00	Oct. 25.....	92.53
Oct. 22.....	35.22	Nov. 8.....	297.15
Oct. 23.....	33.25	Nov. 8.....	229.90
Nov. 7.....	433.60	Nov. 15.....	77.12
Nov. 8.....	323.02	Nov. 18.....	119.02
Nov. 15.....	230.00	Nov. 19.....	34.36
Nov. 18.....	30.00	Nov. 20.....	30.25
Dec. 2.....	613.54	Nov. 21.....	44.35
Dec. 3.....	34.30	Nov. 22.....	72.44
Dec. 5.....	35.22	Nov. 25.....	35.93
Dec. 6.....	35.22	Nov. 26.....	39.10
Dec. 16.....	95.00	Nov. 28.....	60.25
Dec. 17.....	135.00	Nov. 29.....	149.58
Dec. 19.....	30.00	Nov. 29.....	25.35
1903 Dec. 26.....	50.00	Dec. 5.....	90.79
Jan. 3.....	501.87	Dec. 5.....	34.72
Jan. 6.....	169.00	Dec. 9.....	118.41
Jan. 7.....	37.39	Dec. 10.....	46.45
Jan. 13.....	150.00	Dec. 11.....	33.91
Jan. 16.....	260.00	Dec. 12.....	23.26
Jan. 23.....	25.00	Dec. 13.....	69.48
Jan. 28.....	30.00	Dec. 16.....	15.58
Jan. 31.....	117.21	Dec. 17.....	56.41
Feb. 2.....	38.19	Dec. 18.....	38.62
Feb. 3.....	322.64	Dec. 19.....	43.95
Feb. 4.....	30.00	Dec. 20.....	26.26
Feb. 5.....	366.08	Dec. 23.....	185.15
Feb. 7.....●.....	15.28	Dec. 24.....	72.75
Feb. 10.....	100.00	Dec. 26.....	82.76
Feb. 11.....	168.89	Dec. 27.....	44.44
Feb. 17.....	135.00	1903	
Feb. 18.....	130.00	Jan. 8.....	195.11

Feb. 28.....	242.24	Jan. 9.....	301.07
Mar. 3.....	156.68	Jan. 10.....	30.37
Mar. 4.....	555.33	Jan. 10.....	62.50
Mar. 18.....	180.00	Jan. 13.....	31.60
Mar. 19.....	60.00	Jan. 14.....	41.25
Apr. 1.....	43.89	Jan. 15.....	38.09
Apr. 2.....	240.79	Jan. 16.....	44.75
		Jan. 17.....	44.14
Apr. 3.....	504.03	Jan. 17.....	39.35
Apr. 4.....	123.46	Jan. 20.....	31.10
Apr. 16.....	35.06	Jan. 21.....	52.91
Apr. 17.....	145.00	Jan. 22.....	271.90
Apr. 18.....	60.00	Jan. 23.....	38.41
May 1.....	141.64	Jan. 24.....	38.67
May 2.....	269.71	Jan. 24.....	37.25
May 5.....	280.22	Jan. 27.....	22.40
May 6.....	409.51	Jan. 28.....	51.31
May 15.....	70.00	Jan. 29.....	34.98
May 16.....	170.00	Jan. 30.....	122.56
June 2.....	721.86	Feb. 4.....	292.50
June 6.....	273.77	Feb. 5.....	8.68
June 16.....	205.00	Feb. 5.....	26.00
June 17.....	60.00	Feb. 6.....	36.57
July 1.....	373.31	Feb. 7.....	88.95
July 2.....	397.13	Feb. 7.....	29.06
July 3.....	35.05	Feb. 10.....	34.15
July 9.....	19.82	Feb. 11.....	51.86
July 16.....	70.00	Feb. 11.....	130.00
July 17.....	175.00	Feb. 13.....	37.22
July 18.....	50.00	Feb. 14.....	29.68
Aug. 1.....	667.88	Feb. 14.....	171.82
Aug. 4.....	81.64	Feb. 17.....	75.21
Aug. 15.....	280.00	Feb. 18.....	45.23
Aug. 18.....	35.00	Feb. 19.....	28.95
Sept. 2.....	453.92	Feb. 20.....	24.15
Sept. 3.....	389.91	Feb. 21.....	32.75
Sept. 4.....	50.82	Feb. 21.....●.....	41.98
Sept. 5.....	40.76	Feb. 25.....	23.96
Sept. 12.....	603.55	Mar. 4.....	66.77
Sept. 16.....	180.00	Mar. 4.....	149.71
Sept. 17.....	35.00	Mar. 5.....	65.60

Oct. 1.....	608.91	Mar. 6.....	46.49
		Mar. 7.....	143.85
Oct. 2.....	80.80	Mar. 7.....	27.31
Oct. 3.....	48.36	Mar. 10.....	50.26
Oct. 6.....	150.00	Mar. 11.....	41.72
Oct. 9.....	18.81	Mar. 12.....	45.20
Oct. 10.....	131.01	Mar. 13.....	26.73
Oct. 16.....	155.00	Mar. 14.....	36.16
Oct. 17.....	60.00	Mar. 14.....	68.79
Oct. 22.....	100.00	Mar. 17.....	31.97
Oct. 30.....	36.60	Mar. 18.....	55.16
Oct. 31.....	333.59	Mar. 19.....	40.76
Nov. 5.....	53.13	Mar. 20.....	53.00
Nov. 5.....	75.82	Mar. 21.....	20.55
Nov. 7.....	376.79	Mar. 21.....	15.32
Nov. 17.....	70.00	Mar. 24.....	38.52
Nov. 18.....	197.17	Mar. 25.....	51.15
Nov. 19.....	125.00	Mar. 26.....	43.62
Nov. 21.....	25.00	Mar. 27.....	35.80
		Mar. 28.....	33.68
Dec. 1.....	521.14	Apr. 3.....	114.44
Dec. 2.....	48.36	Apr. 4.....	121.75
Dec. 3.....	264.32	Apr. 4.....	44.06
Dec. 16.....	125.00	Apr. 4.....	29.61
Dec. 17.....	155.00	Apr. 7.....	33.30
Dec. 18.....	35.00	Apr. 8.....	48.27
Dec. 22.....	25.00	Apr. 9.....	48.16
1904 26.....	45.00	Apr. 10.....	39.27
Jan. 2.....	487.58	Apr. 11.....	27.53
Jan. 4.....	22.10	Apr. 11.....	24.09
Jan. 5.....	36.60	Apr. 14.....	32.60
Jan. 6.....	106.29	Apr. 15.....	36.50
Jan. 7.....	13.59	Apr. 16.....	41.42
Jan. 8.....	473.52	Apr. 17.....	38.05
Jan. 9.....	7.00	Apr. 18.....	19.21
Jan. 12.....	10.00	Apr. 18.....	40.04
Jan. 15.....	15.00	Apr. 20.....	246.98
Jan. 16.....	255.00	Apr. 23.....	66.27
Jan. 19.....	2.00	Apr. 24.....	130.30
Jan. 20.....	15.24	Apr. 25.....	34.73

Jan. 21.....	30.00	Apr. 25.....	44.12
Jan. 27.....	5.00	Apr. 28.....	47.36
Jan. 28.....	5.00	May 2.....	132.00
Jan. 30.....	492.60	May 5.....	77.08
Feb. 2.....	74.80	May 5.....	79.75
Feb. 4.....	418.83	May 6.....	34.09
Feb. 6.....	41.64	May 7.....	150.65
Feb. 9.....	5.00	May 8.....	22.35
Feb. 11.....	5.00	May 9.....	55.16
Feb. 13.....	80.00	May 11.....	18.10
Feb. 17.....	245.00	May 13.....	105.33
Mar. 1.....	32.72	May 14.....	24.85
Mar. 1.....	378.60	May 15.....	37.33
Mar. 2.....	85.36	May 16.....	17.69
Mar. 5.....	512.69	May 16.....	93.03
Mar. 12.....	20.60	May 19.....	64.59
Mar. 17.....	245.00	May 20.....	32.24
Mar. 22.....	20.60	May 21.....	24.01
Mar. 29.....	50.00	May 22.....	137.90
Apr. 1.....	437.51	May 23.....	57.29
Apr. 2.....	405.57	May 23.....	26.88
Apr. 9.....	184.09	May 25.....	20.49
		May 27.....	44.57
		May 28.....	39.92
		June 2.....	17.41
		June 5.....	206.43
		June 6.....	22.85
		June 6.....	23.75
		June 9.....	37.75
		June 10.....	79.03
		June 11.....	40.41
		June 12.....	32.75
		June 13.....	26.04
		June 13.....	33.52
		June 16.....	29.51
		June 17.....	45.41
		June 18.....	45.05
		June 18.....	36.45
		June 20.....	29.67
		June 20.....	32.28
		June 23.....	34.75

June 24.....	39.14
June 25.....	133.52
June 26.....	64.20
July 6.....	30.21
July 6.....	80.01
July 7.....	67.66
July 9.....	52.50
July 9.....	97.81
July 10.....	29.40
July 11.....	141.75
July 11.....	44.87
July 15.....	89.21
July 17.....	51.98
July 18.....	24.02
July 21.....	46.42
July 22.....	38.65
July 23.....	43.65
July 24.....	28.41
July 25.....	30.86
July 25.....	130.30
July 28.....	21.35
Aug. 1.....	93.27
Aug. 4.....	131.96
Aug. 5.....	38.45
Aug. 6.....	28.40
Aug. 6.....	55.69
Aug. 7.....	28.22
Aug. 8.....	30.65
Aug. 11.....	54.35
Aug. 12.....	35.55
Aug. 12.....	40.22
Aug. 14.....	21.30
Aug. 15.....	23.22
Aug. 15.....	35.85
Aug. 18.....	18.00
Aug. 18.....	18.00
Aug. 19.....	45.48
Aug. 20.....	29.23
Aug. 21.....	20.97
Aug. 22.....	149.46
Aug. 22.....	40.81



Aug. 25.....	44.66
Aug. 25.....	29.85
Aug. 27.....	21.95
Aug. 28.....	150.93
Aug. 28.....	145.75
Aug. 29.....	123.35
Sept. 1.....	95.50
Sept. 2.....	90.80
Sept. 4.....	250.00
Sept. 4.....	47.43
Sept. 5.....	62.91
Sept. 10.....	237.01
Sept. 11.....	57.02
Sept. 12.....	34.13
Sept. 15.....	34.72
Sept. 16.....	42.67
Sept. 17.....	41.63
Sept. 18.....	28.05
Sept. 19.....	31.50
Sept. 19.....	38.16
Sept. 22.....	24.40
Sept. 24.....	125.50
Sept. 26.....	32.05
Sept. 26.....	33.40
Sept. 29.....	37.03
Sept. 30.....	53.76
Oct. 1.....	140.60
Oct. 1.....	49.51
Oct. 3.....	60.50
Oct. 3.....	43.40
Oct. 6.....	33.35
Oct. 7.....	150.00
Oct. 7.....	55.98
Oct. 8.....	29.94
Oct. 9.....	12.45
Oct. 10.....	35.86
Oct. 10.....	38.00
Oct. 10.....	36.33
Oct. 10.....	12.32
Oct. 13.....	33.83
Oct. 14.....	42.68
Oct. 15.....	44.94

Oct. 16.....	60.71
Oct. 17.....	166.25
Oct. 17.....	25.25
Oct. 21.....	71.55
Oct. 22.....	52.06
Oct. 23.....	26.28
Oct. 24.....	23.45
Oct. 24.....	28.85
Oct. 27.....	38.12
Oct. 28.....	34.57
Oct. 29.....	25.23
Oct. 30.....	57.65
Oct. 31.....	202.47
Nov. 4.....	25.85
Nov. 4.....	120.00
Nov. 6.....	32.98
Nov. 6.....	138.16
Nov. 7.....	28.41
Nov. 9.....	51.03
Nov. 11.....	49.74
Nov. 11.....	48.81
Nov. 13.....	36.70
Nov. 13.....	22.60
Nov. 14.....	45.63
Nov. 17.....	25.12
Nov. 18.....	38.52
Nov. 19.....	41.15
Nov. 20.....	29.96
Nov. 21.....	138.45
Nov. 21.....	17.75
Nov. 24●.....	47.60
Nov. 25.....	46.80
Nov. 27.....	54.59
Nov. 28.....	33.70
Nov. 28.....	21.17
Dec. 1.....	32.05
Dec. 2.....	53.90
Dec. 3.....	59.58
Dec. 4.....	32.90
Dec. 5.....	39.25
Dec. 5.....	46.84
Dec. 8.....	26.55

Dec. 9.....	172.65
Dec. 10.....	34.44
Dec. 11.....	34.85
Dec. 12.....	34.00
Dec. 12.....	31.55
Dec. 15.....	48.11
Dec. 16.....	43.65
Dec. 17.....	38.25
Dec. 18.....	47.55
Dec. 19.....	41.15
Dec. 19.....	31.38
Dec. 22.....	249.13
Dec. 23.....	64.86
Dec. 24.....	58.55
Dec. 26.....	51.17
Dec. 26.....	74.51
Dec. 29.....	40.26
Dec. 30.....	68.10
1904.	
Mar. 5.....	33.40
Mar. 5.....	162.43
Mar. 8.....	36.69
Mar. 9.....	42.04
Mar. 10.....	55.52
Mar. 11.....	30.20
Mar. 12.....	46.36
Mar. 12.....	39.10
Mar. 15.....	21.07
Mar. 16.....	36.45
Mar. 18.....	94.40
Mar. 19.....	20.01
Mar. 19.....	38.89
Mar. 22.....	21.70
Mar. 23.....	168.43
Mar. 24.....	17.45
Mar. 25.....	43.55
Mar. 26.....	54.60
Mar. 26.....	18.07
Mar. 29.....	59.35
Mar. 30.....	39.25

	Mar. 31.....	71.01
	Apr. 1.....	17.30
	Apr. 9.....	37.51
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	\$59,196.05	\$59,196.05

I, GEORGE E. BRITTON, individual bookkeeper of the Fredonia National Bank of Fredonia, N. Y., hereby certify that the foregoing account of M. H. Taylor, P. M., is a true and correct copy of the books of said bank from Nov. 1, 1899, to April 1, 1905.

GEORGE E. BRITTON.

STATE OF NEW YORK, }  
Chautauqua County, } ss.:

George E. Britton, being duly sworn, deposes and says, that he resides in the village of Fredonia, Chautauqua County, N. Y., and that he is the individual bookkeeper of the Fredonia National Bank in said village. That the foregoing transcript and copy of the account of M. H. Taylor, P. M., is a true and correct copy of the books of said bank relating to said account.

GEO. E. BRITTON.

Sworn to before me this 16th }  
day of March, 1905. }

H. L. CUMMING,  
Notary Public.

Q. You know Frank P. Ball? A. I do.

Q. And he is a resident of Fredonia? A. He is.

Q. Did Frank P. Ball keep an account in your bank during the years 1898, 1899 and 1900? A. It begins in 1899.

Q. And ends at what time? A. No, I am mistaken, it begins in 1897.

Q. What time, October? A. October, 1897.

Q. And runs down to what time? A. Runs down to December 22, 1903.

Q. You have with you a verified copy of the account of Mr. Ball with your bank? A. Yes, sir.

Q. In your bank? A. Yes, sir.

Q. Containing an accurate transcript from the books of your bank? A. Yes, sir.

Q. Account with Frank P. Ball offered in evidence.

By MR. CARR:

Q. This is the account that appears in the ledger? A. Yes.

Q. The individual ledger? A. Yes, sir.

MR. COMAN: I offer in evidence Exhibit 98, on pages 283 and 284 of the record.

THE PRESIDENT: It will not be read unless requested.

F. P. BALL,  
In Account with  
FREDONIA NATIONAL BANK,  
Fredonia, N. Y.

1897.	Dr.		Cr.	
Oct. 2.....	800.00	Oct. 2.....	600.00	
Oct. 25.....	15.33	Nov. 1.....	757.16	
Nov. 1.....	750.00	Nov. 17.....	11.85	
Dec. 14.....	2.91	Dec. 2.....	1.80	
1898.		1898.		
Jan. 26.....	2.30	Jan. 3.....	24.34	
Feb. 1.....	14.00	Jan. 17.....	35.00	
Feb. 2.....	5.00	Jan. 20.....	20.00	
Feb. 7.....	60.00	Feb. 7.....	59.68	
Feb. 14.....	5.00	Feb. 28.....	15.00	
Feb. 14.....	6.38	Mch. 2.....	597.00	
Feb. 16.....	13.00	Mch. 2.....	10.00	
Feb. 28.....	1.50	Mch. 12.....	2,500.00	
Mch. 2.....	600.00	Apl. 1.....	598.36	
Mch. 12.....	2,510.00	Apl. 20.....	18.00	
Mch. 26.....	2.00	Sept. 1.....	593.70	
Apr. 1.....	600.00	Oct. 5.....	50.00	
Apl. 22.....	17.60	Oct. 7.....	3,040.00	
Aug. 11.....	1.25	Nov. 2.....	593.70	
Sept. 1.....	600.00	Dec. 31.....	6.00	
Sept. 6.....	5.00	1899.		
		Jan. 4.....	594.88	
Sept. 7.....	15.00	Mch. 9.....	3,048.86	

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Sept. 9.....	6.00	Aug. 1.....	4.00
Oct. 7.....	3,090.62	Sept. 6.....	594.68
Nov. 2.....	600.00	1900.	
Nov. 17.....	2.70	Apr. 16.....	150.00
1899.		May 3.....	2,425.08
Jan. 4.....	600.00	Aug. 1.....	610.18
Mch. 9.....	3,047.85	Aug. 3.....	4.00
Sept. 6.....	600.00	Oct. 10.....	2,297.24
1900.		Oct. 15.....	48.92
May 3.....	2,574.58	1901.	
Aug. 1.....	615.25	Jan. 10.....	2,070.00
Oct. 10.....	2,346.16	Jan. 10.....	152.85
1901.		1903.	
Jan. 10.....	2,222.85	Oct. 17.....	40.00
1903.		Dec. 22.....	105.26
Oct. 20.....	40.00		
Dec. 22.....	105.20		
	<hr/>		<hr/>
	21,877.48		21,877.48

I, GEORGE E. BRITTON, individual bookkeeper of the Fredonia National Bank of Fredonia, N. Y., hereby certify that the foregoing account of F. P. Ball is a true and correct copy of the books of said bank from October 1, 1897, to January 1, 1904.

GEORGE E. BRITTON.

STATE OF NEW YORK, }  
CHAUTAUQUA COUNTY, } ss.:

George E. Britton, being duly sworn, deposes and says, that he resides in the village of Fredonia, Chautauqua county, N. Y., and that he is the individual bookkeeper of the Fredonia National Bank in said village. That the foregoing transcript and copy of the account of F. P. Ball is a true and correct copy of the books of said bank relating to said account.

GEORGE E. BRITTON.

Sworn to before me this 16th  
day of March, 1905.

H. L. CUMMING,  
Notary Public.

(Seal.)

Q. Mr. Green, do you remember the fact that for a long period of time a promissory note was carried in your bank, Frank P. Ball being the maker, and during a certain period of time Mrs. Warren B. Hooker being an endorser upon it? A. I do.

Q. Will you produce, Mr. Green, the books or records of your bank showing the history of that note? A. (Produced.)

Q. That is a transcript from the records of your bank, is it? A. Yes, sir.

Q. From what book do you call this? A. From the liability book, and also the tickler.

Q. Will you take this statement, Mr. Green, and refer to it; when was the original note discounted in your bank?

MR. COMAN: I offer in evidence Exhibit No. 99, on pages 286 to 289, inclusive, of the record.

THE PRESIDENT: It will not be read unless requested by some member of the joint assembly.

#### LIABILITY BOOK NO. 6, 1894-1896.

Sundry "B" a/c.

Name.	Endorser.	Date.	No.	Due.	Amt.	Rem'ks.
F.P.Ball	E.E.Hooker	Sep. 10, '96	4378	Mar. 10, '97	\$1,716.16	12/4
W. B. HOOKER						

F.B.Ball	E.E.Hooker	Mar. 10, '97	6298	Sep. 10, '97	1,710.10	3/24
F.P.Ball	E.E.Hooker	May 8, '97	7208	Sep. 8, '97	600.00	6/23
F.P.Ball	E.E.Hooker	May 8, '97	7209	Sep. 8, '97	200.00	9/20

#### FREDONIA NATIONAL BANK

Discount Book No. 4. FRIDAY, Oct. 7, 1898.

Fol.	Liably.	No.	Drawer.	Endorser.	Date.	Time Due.	Amt.
286	4284	F.P.Ball.	Etta E.	Hooker.	Sep. 10-90.	Dec. 9.	\$3,085.60
Disct.	Net.	Led. Fol.	To whom credited.				
\$45	\$3,040	862	F. P. Ball.				

LIABILITY BOOK No. 7, opened Jan. 3, 1898, by A. W. Hopkins, to Sept., 1901.

## FREDONIA NATIONAL BANK

Etta E. Hooker a/c.

Maker.	Endorser.	Date.	No.	Due.	Amt.	Rem'ks.
F.P.Ball.	E.E.Hooker,	Sep. 10, 1898	4289	Dec. 9, '98.	3,085.60	10/7

W. B. Hooker account;—F. P. Ball not in account.

Sundry "B" a/c.

F. P. Ball	Bank	Jan. 10, '00	9814	Apl. 10, '00	\$2,574.58	5/3
F. P. Ball	Bank	Apl. 10, '00	1144	July 10, '00	2,461.46	6/12
F. P. Ball	Bank	July 10, '00	1974	Oct. 10, '00	2,346.16	10/10
F. P. Ball	Bank	Oct. 10, '00	3022	Jan. 10, '01	2,222.83	1/10
F. P. Ball	Bank	Jan. 10, '01	4112	Apl. 10, '01	2,101.05	4/10
F. P. Ball	Bank	Apl. 10, '01	5238	July 10, '01	1,979.30	7/10
F. P. Ball	Bank	July 10, '01	6459	Oct. 10, '01	1,852.40	10/10

## FREDONIA NATIONAL BANK.

Etta E. Hooker a/c. Nothing with F. P. Ball.

W. B. Hooker a/c. Nothing with F. B. Ball.

Sundry "B" acct.

Maker.	Endorser.	Date.	No.	Due.	Amt.	Rem'ks.
F. P. Ball	Bank	Oct. 10, '01	202	Jan. 10, '02	\$1,725.60	1/17
F. P. Ball	Bank	Jan. 10, '02	1438	April 10, '02	1,593.60	4/12
F. P. Ball	Bank	April 10, '02	2477	July 10, '02	1,441.30	7/12
F. P. Ball	Bank	July 10, '02	3669	Oct. 10, '02	1,278.90	10/18
F. P. Ball	Bank	Oct. 10, '02	4882	Jan. 10, '03	1,137.15	1/12
F. P. Ball	Bank	Jan. 10, '03	5994	April 10, '03	975.00	4/23
F. P. Ball	Bank	April 10, '03	7298	July 10, '03	900.00	7/10
F. P. Ball	Bank	July 10, '03	8314	Oct. 10, '03	800.00	10/13
F. P. Ball	Bank	Oct. 10, '03	9429	Jan. 10, '04	800.00	1/4

## FREDONIA NATIONAL BANK.

Tickler: 1898-1899.

Maker.	Owner.	Where payable and sent.	Amt.	Remarks.
March 10, 1898.				
F. P. Ball,	State Bank,	Forestville,	\$800.00	Paid 12
F. P. Ball,	State Bank,	Forestville,	1,710.00	Paid 12
F. P. Ball,	A. B. Sheldon,		500.00	Renewed 12
September 10, 1898.				
F. B. Ball,	A. B. Sheldon,		\$515.00	Paid 10-6
F. P. Ball,	State Bank,	Forestville,	824.00	"
F. P. Ball,	State Bank,	Forestville,	1,751.00	"



December 9, 1898.  
 Ball, P. State Bank, Forestville,               \$3,085.00   Renewed. 9  
 March 9, 1899.  
 9F. P. Ball, State Bank, Forestville,           \$3,047.85   Renewed 9

FREDONIA NATIONAL BANK.

Tickler: 1898-1899.

Maker.	Owner.	Where payable and sent.	Amt.	Remarks.
July 9, 1899.				
F. P. Ball,	State Bank,	Forestville,	\$2,955.81	Renewed 10
October 10, 1899.				
F. P. Ball,	State Bank,	Forestville,	\$2,795.30	Renewed
				for \$2,684.10

FREDONIA NATIONAL BANK.

Tickler: 1900-1901.

January 10, 1900.  
 F. P. Ball, State Bank, Forestville,           \$2,684.10

FREDONIA NATIONAL BANK.

Tickler: 1904-1905.

Maker.	Owner.	Where payable and sent.	Amt.	Remarks.
Jan. 10, 1904.				
F. P. Ball,	F. W. Kellar,	Cash.	\$800.00	Paid 2
April 10, 1904.				
F. P. Ball,	F. W. Kellar,		775.00	Paid 2
July 10, 1904.				
F. P. Ball,	F. W. Kellar,		775.00	Renewed
October 10, 1904.				
F. P. Ball,	F. W. Kellar,		775.00	Renewed
January 10, 1905.				
F. P. Ball,	F. W. Kellar,		725.00	Renewed
April 10, 1905.				
F. P. Ball,	F. W. Kellar,		700.00	

MR. CARR: It is possible there may be some occasion for reference to what appears in those figures. I simply call the attention of the President and members of the joint assembly to that because it is doubtful whether the examination wholly carries out and conveys a clear idea of what appears in those figures.

THE PRESIDENT: They will be printed in full in the record.

MR. ELSBERG: Where an exhibit is offered in evidence it would be well to have it described briefly, so those who have no books will know what it is.

THE PRESIDENT: As you, Mr. Coman, gave them covers all the exhibits.

MR. COMAN: Yes. The exhibits are offered for the purpose of showing all the checks Ball received as a clerk in the Fredonia postoffice were applied in payment of this note in question, with the exception of \$4.40.

Q. Were you also personally familiar with the history of this note from its inception? A. I know when it was taken; yes, sir.

Q. The original note was dated at what time? A. September 10, 1896.

Q. What was the amount of it? A. The amount at maturity was \$1,716.16.

Q. And at maturity at what date? A. March 10, 1897.

Q. Who was the maker? A. Frank P. Ball.

Q. Who were the endorsers? A. The liability book shows that it was endorsed by both Etta E. Hooker and W. B. Hooker.

Q. When was the first renewal? What was the date of the first renewal? A. March 10, 1897.

Q. The amount? A. \$1,710.10.

Q. The same maker? A. Yes, sir.

Q. What endorser? A. Etta E. Hooker.

Q. Etta E. Hooker alone? A. Yes, sir.

Q. The next renewal? A. Well, there is another note of \$600. The next note was \$600, dated May 8, 1897, payable September 8, 1897.

Q. Made by whom? A. Made by F. P. Ball.

Q. And endorsed? A. By Etta E. Hooker.

Q. Were those notes consolidated at the next— A. There is also another one made and endorsed by the same parties, dated the same rate, maturing at the same time, of \$200.

Q. Proceed, if you will, and give the renewals, Mr. Green, of that note from time to time down to this date?

Q. Give also any changes in the parties.

A. I do not see the next renewal; the next one seems to be September 10, 1898; part of the time this note was not held by us.

Q. What part of the time? A. Well, I think that the renewal made at that time was held by the State Bank of Forestville.

Q. Where is that? A. That is adjoining us.

Q. In what way was that brought about? A. We furnished them at various times with paper, and this note was taken from us.

Q. Well, you may go on and give the history of the note so far as it appears in your record.

MR. STANCHFIELD: The witness is evidently translating the paper; he is giving his explanation of what it shows.

MR. FISH: If he does that, of course, it will go in the minutes; if he simply reads the paper it is unnecessary to duplicate it.

A. That was renewed September 10, 1898, \$3,985.60.

By MR. CARR:

Q. Who was the maker and endorser of that note? A. The same.

Q. F. P. Ball and Etta E. Hooker? A. Yes, sir.

By MR. COMAN:

Q. When was the next renewal? A. These are not in order here. It is rather difficult to pick them out. December 9, 1898, \$3,085.60. March 9, 1899, \$3,047.85. July 9, 1899, \$2,955.81. October 10, 1899, \$2,795.30. January 10, 1900, \$2,685.10.

By MR. CARR:

Q. What is that date? A. January 10, 1900.

Q. Who is the maker and endorser of that note? A. The same maker and the same endorser. January 10, 1900, \$2,574.58.

By MR. COMAN:

Q. Are there two notes on that date? A. This is the same note with the various renewals. I have made a mistake about being the same endorser.

MR. CARR: That is just the reason I called your attention to it.

A. (continuing) That was a mistake. The note that was renewed on January 10, 1900, was made direct to the bank.

Q. Without endorser? A. Yes, sir.

Q. How much? A. \$2,574.58. April 10, 1900, \$2,461.46.

By MR. CARR:

Q. Still direct to the bank, was it not? A. Yes, sir. July 10, \$2,346.16.

By MR. FISH:

Q. No endorser? A. No endorser on any of these. October 10, \$2,222.85. January 10, 1901, \$2,101.05. April 10, 1901, \$1,979.30.

MR. CARR: Mr. President, I think it is proper that we should at this stage raise the objection that was raised before the Assembly Judiciary Committee, that the subsequent history of this note after Mrs. Hooker ceased to be endorser upon it is entirely immaterial in this transaction. There is no claim or pretense that Mrs. Hooker after January, 1900, was in any way liable upon this note or ever came back upon it as a party, and whatever may have been done in the payment of the note, however it may have been paid, can by no possibility affect the right of the defendant in this matter.

THE PRESIDENT: Objection overruled.

April 10, 1901, \$1,979.30; July 10, 1901, \$1,852.40; October 10, 1901, \$1,725.60; January 10, 1902, \$1,593.60; April 10, 1902,

\$1,278.90; October 10, 1902, \$1,137.15; January 10, 1903, \$975; April 10, 1903, \$900; July 10, 1903, \$800; October 10, 1903, \$800; January 10, 1904, \$800; April 10, 1904, \$775; July 10, 1904, \$775; October 10, 1904, \$725; April 10, 1905, \$700. That is the last.

By MR. WEMPLE:

Q. No endorsers on those last four or five renewals? A. Not after December, 1899.

By MR. CARR:

Q. The renewal then had no endorser on it; Mrs. Hooker went off the note in 1899? A. She was on, but on maturing January 10 it was renewed without endorser.

By MR. COMAN:

Q. That was the first note upon which there was no endorser? A. Yes, sir.

Q. January 10, 1900? A. Yes, sir.

Q. From time to time after October 11, 1898, did Ball make payments upon this note? A. Yes, sir.

Q. In what way? A. I don't know as I could state in what way.

Q. Well, they were paid to you, weren't they? A. They were paid to the bank; yes, sir.

Q. Paid to you personally, were they not, Mr. Green? A. I don't think so; they may have been sometimes, but not at all times.

Q. You were familiar, Mr. Green, with the fact that Mr. Ball was receiving checks from the postmaster, Mr. Taylor? A. Yes, sir.

Q. And Mr. Moore? A. Yes, sir.

Q. What was done with those checks? A. Well, I could not state. I think a number of them were applied on this note, or notes. There were several notes at one time.

Q. Have you brought the deposit slips referring to Mr. Ball's account? A. Yes, sir.

Q. Will you produce them, please? A. Yes, sir.

Q. Were any of these checks deposited in your bank to Mr. Ball's credit, and, if so, what ones, Mr. Green? A. These deposit tickets are, I think, complete, showing all the deposits that were made during this period.

Q. Can you by reference to that tell—take the first one, under date of November 1, 1898—was there any item of \$32.80 in Mr. Ball's deposit? A. I do not see any. Oh, 1898?

Q. Yes, November 1. A. I do not see any.

Q. Now, Mr. Green, you have there all the deposit slips during the period covered by my subpoena, haven't you, from October 1, 1897? A. I think so.

Q. To December 31, 1903? A. Yes, sir.

MR. COMAN: I now offer in evidence Exhibit 100, being the deposit slips referred to by the witness, found upon pages 295 to 308 inclusive of the record.

MR. CARR: You want to read what appears on page 292. He is asked to state how many there are and there is an answer.

MR. COMAN: Read the answer, Mr. Stevens, please.

MR. STEVENS: "Answer, there are 39 of them; I do find some credits here of the postmaster checks."

MR. COMAN: "Q. Are they so designated on the slips?"

MR. STEVENS: "A. Yes, sir."

MR. COMAN: I suppose this is received under the same conditions and need not be read.

THE PRESIDENT: The exhibit will not be read unless requested.

MR. COMAN: Page 308.

By MR. COMAN:

Q. Is there any way in which you can tell either from recollection or otherwise as to how the credits upon this note were made up at the time of the various renewals? A. Well, I think that

in several instances these checks were made in payment more or less; now, some of them I see there are credited in his account.

Q. Are credited in his account? A. Yes, sir.

Q. And did he at any time, in addition to the amounts credited to him by reason of these postmaster's checks, did he give you at any time a check upon your bank against his account? A. I think he must; I could not state as to that.

Q. Mr. Green, at some time did the renewals of this note go through the account and at other times not? A. Yes, sir.

Q. Now, at such times as the renewals went through the account these postmaster's checks were credited in the account, were they not? A. I presume so.

Q. And at other times not? A. I should presume so.

Q. Won't you just look at the account and see whether that is not the fact, Mr. Green? A. This does not give the dates on this side, but I should think that that was the fact.

Q. You, of course, remember, as an independent fact, do you not, that many of these postoffice checks which Mr. Ball turned over to you did not go into his bank account; they were not credited? A. No, sir.

Q. In his bank account, but were credited directly upon the note? A. I think it was applied.

Q. Applied upon the note? A. I think in some cases; I cannot tell just when.

Q. Have you there the transcript showing the history of the Ball note before you? A. Yes, sir.

Q. Will you refer to that, please? A. Yes, sir.

Q. And also in connection with that will you refer to Mr. Ball's bank account? A. I guess you have the statement.

Q. Do you find an entry under date October 7, 1898, charging Ball with \$3,000.97? A. \$3,000.62 it says here.

Q. That was made by you, Mr. Green? A. I don't know, but I assume it is this note or notes.

Q. It was three notes, wasn't it, that were consolidated at that time? A. I think so.

Q. \$1,751, \$824 and \$515? A. I presume that is so; I don't know.

Q. When was the first credit upon that note or the first reduction after that date? A. I should say it was December 9, 1898.

Q. And the amount of the note and interest to that date were how much? A. The amount was \$3,085.60.

Q. How much was he credited with upon the note at that time; in other words, how much was it reduced? A. The next note was \$3,047.85.

Q. So the note was reduced \$37.75, was it not? A. Yes, sir.

Q. What was the date of the next renewal, that is, that appears in your bank? A. The next July; the note maturing July that same year.

Q. How much was the amount of the note and interest at that time? A. \$2,955.81.

Q. Is that right? A. I think so; it matured July 9; the other one matured March 9; that would be four months later as its maturity; these figures are all the amounts due at the maturity of the note.

Q. Can you tell me, Mr. Green, how much was credited, or, in other words, how much this note was reduced from the amount due on it of principal and interest at the time of each of these renewals? A. I think so.

Q. Now, will you kindly do that, commencing with October 7, 1898? A. I think that the statement that I gave you would show all that I read here a few moments ago; that would show the difference. The maturity of this note given in March was on July 9, and at maturity it amounted to \$2,955.81 on July 8, 1899. The next one, October 10, 1899, was \$2,795.30. January 10, 1900, was \$2,684.10. April 10, \$2,574.58. July 10, \$2,461.46. October 10, \$2,346.16.

By MR. CARR:

Q. Didn't we have all these figures once before from this witness? A. Yes, these are the same figures I gave you once before, I think.



By MR. COMAN:

Q. Didn't you give the amount, including the interest? A. These all include interest.

Q. You are giving us the amount of the new note each time, are you not now? A. The amount of the new note at its maturity.

Q. At its maturity? A. Yes, sir.

Q. You are not giving us the amount so that we can make a comparison between the amount of each note at its maturity and the amount for which the new note was given, are you, so that we can show the amount of the actual payment or reduction of the note? A. Well, it would be the difference of the interest on the old note.

Q. The notes are all on interest, are they? A. The notes are all on interest, yes, sir.

Q. Mr. Green, do these dates that you are giving us agree with your books? A. Yes, taken from them.

Q. I find under date of April 10 you have given us here \$2,574.58; what does that represent? A. This note you mean?

Q. Yes. A. That represents the amount of the note on April 10, 1900.

Q. Doesn't that represent the same transaction which is referred to in your books under date May 3, 1900, as \$2,425.08? A. In F. P. Ball's account you mean?

Q. Yes. A. That is 1900, it is \$2,574.58.

Q. Now look at the bank account under date of May 3? A. That is it.

Q. What is the amount? A. \$2,574.58.

Q. Now, why does that appear under date May 3 on your bank book instead of April 10? A. Because evidently it was overdue. It must have been overdue.

Q. And is that the explanation wherever there is a discrepancy in these dates? A. Yes, sir. I should say so.

Q. Mr. Green, I wish you would explain a little further about these to me, not being familiar with banking apparent discrepancies; you take under date of July 9th, you have given us an

amount of \$2,955.81, what does that represent? A. That represents the amount of the note which was due July 9, 1899, the principal and interest.

Q. Now under date of, apparently August—I am not sure, but the last entry preceding August 1st in the bank account is an item, \$2,897.85; is that supposed to represent the same item?

A. That is a credit or charge?

Q. That is a credit. A. What year was this?

Q. 1899? A. I do not see any such credit here.

Q. \$2,897.85? A. No, sir.

Q. I have here the old unverified account, and perhaps they may not exactly correspond? A. This is a verified account.

Q. Now, on the 9th day of July, 1899, the note was renewed, was it, on that date? A. Yes, sir.

Q. And the amount of the note and interest on that date was \$2,955.81? A. It was.

Q. How much was paid and credited on it at that date? A. I could not tell you; it can be easily computed.

Q. In what way? A. It would be the difference between \$2,795.30 and \$2,955.81. There would be the interest added to the renewal note.

Q. That would be \$160.51, would it? A. Yes, it would be \$160.51.

Q. The next renewal was October 10th; the amount of the note and interest to that date was \$2,795.30? A. Yes, sir.

Q. How much was paid on it at that date? A. Well, the new note at maturity, that would include the interest you know upon the renewal, was \$2,684.10; in other words, it would be about \$110 besides interest. The other time about \$160.

Q. Don't you know what the face of the new note was? A. I could not give you that; we did not have it; this shows the maturities on the tickler.

Q. What is the rate of interest charged, do you know? A. Six per cent.

Q. Then it would be substantially \$110 that was paid and credited besides the interest? A. Yes, sir.

Q. And the interest would amount to about how much? A. It would be about \$42.

Q. Making about \$152 paid and credited upon the note at that date? A. Yes, on that renewal.

Q. Is that as accurately as you could give us the amount? A. Well, it would be about one and a half times the amount of the note; it would be about \$42; on \$2,800 it would be \$42 for ninety days.

Q. So that the credit at that time would be \$152 substantially? A. Substantially, I should say.

Q. It would be \$110 plus the interest for what period of time? A. Three months.

Q. On \$2,795.30? A. It would not be quite that, no, because the \$2,795.30 included the interest; you take about \$42 off that and then you would have it.

Q. Mr. Green, is there any way in which you can tell exactly how much was paid and credited upon these notes at each renewal? A. I think I could get it from Forestville; you see, these notes were not in our bank at this time.

Q. I am speaking now more particularly as to the payments made at your bank? A. Why, yes, we could give you it exactly.

Q. Give it from the records? A. From the records of the bank, yes, sir.

Q. Didn't you understand that we desired you to produce all records which showed anything in relation to this loan? A. Yes, but this was not in our bank at this time.

Q. But have you produced here all the records of your bank relating to this note? A. Yes; this is copied from our liability book, when the note was in our bank.

Q. Is there any book in your bank which shows how much was paid upon this note at each renewal or between? A. Not when we did not own it.

Q. No, but when you did own it? A. Yes, sir.®

Q. What book is that? A. That would be the discount book.

Q. Is that here? A. It is not.

Q. Will, you, Mr. Green, prepare a copy of the entries in that discount book and have them verified and send it to the committee? A. I will. Here is one copy of the note, I think, when they were combined; \$3,085.60; the interest upon it was \$45.60, showing net credit of \$3,040, which appears in Mr. Ball's account, credited to Ball.

Q. On October 7, 1898? A. Yes.

This is the only time, Mr. Coman, I think that this large note appears in our discount book.

Q. So that would furnish us no information, the transcript of your discount book? A. No, sir; that would have to be from the books at Forestville:

Q. It was only in the Forestville Bank less than a year, wasn't it? A. Oh, no, it was there more than that, I think; those exact figures can be obtained.

Q. No payments were made on this note to the Forestville Bank, were there? A. No.

Q. They were all made at your bank, whatever payments were made on it? A. Yes, but no record of the note is there; the payments were made and remitted.

Q. Remitted to Forestville? A. Yes.

Q. You have a record of those payments, haven't you, as they were made and remitted? A. There was a draft bought and forwarded.

By MR. WEMPLE:

Q. Didn't you keep an account with the Forestville Bank? A. Yes; the exact figures can be obtained, but these are the exact figures except the interest is added to the note.

By MR. COMAN:

Q. Then in order to ascertain the amount, for instance, the original amount of the note of July 9th, say, or maturing July 9th, \$2,955.81, how would you ascertain the original amount of that note? A. Well, I would ask the bank at Forestville to give us a record from their discount book.

Q. Then can't it be done here as a matter of computation? A. I think it could substantially; it might be a few cents off.

You see, this tickler just shows the amount of the note at its maturity, which includes the interest.

Q. That is to say if the note was \$100 and was on a year's time it would show on your books as \$106? A. Yes, it would show on our tickler as \$106.

By MR. FISH:

Q. Then you could figure it up going back to the original note? A. You could tell all of these substantially within a few cents any of them; I do not think there would be over a dollar off, I should not think so.

CROSS EXAMINATION by MR. CARR: (Mr. Carr read the questions and Mr. Goodrich the answers).

Q. Now, Mr. Green, I understand that this paper, which is Exhibit 96, is a transcript from the individual ledger in the Fredonia National Bank of the account of Arthur D. Moore, as postmaster? A. It is.

Q. Covering the period of the dates that are named there? A. It is.

Q. Now, what is the first column at the left? A. The debit against that account.

Q. That is of the checks that were paid? A. Yes, sir.

Q. And to the right is a statement in figures of the amounts that were deposited to the credit of that account? A. Yes, sir.

Q. There is nothing appears upon this account except the dates of the various entries of the amounts? A. No, sir.

Q. But that is all that appears upon the individual ledger? A. It is.

Q. Now is the same true of the account of Mr. Taylor as postmaster? A. It is.

Q. That is, shows the same thing? A. Yes, sir.

Q. Does it necessarily follow that the figures represented on the debit side of the account are of a single check, or may they represent more than one check that is included? A. They might.

Q. There is no way of telling that from this account? A. No, sir.

Q. And the same, I take it, is true of the account of Mr. Ball, is it not? A. Yes.

Q. There is nothing upon that account which will indicate the origin of the different credits that appear here? A. No, sir.

Q. Now, did Mr. Ball have a bank book with the Fredonia National Bank during a portion of this time, a pass book? A. He did.

Q. I show you a book and ask you if you recognize that as the pass-book? A. Yes, sir.

Q. And are you able to say whether that is the one that covers the entire period that is stated in the transcript of the account? A. I should say that it was.

Q. Now in this pass book I call your attention to some of the items that are here; for instance, the first credit in the account of October 2, 1897, "Cash and avls," isn't it? A. Yes.

(Pass book marked "Exhibit A" for identification.)

Q. "Avls" means avails? A. Yes, sir.

Q. That would represent, then, a discount of something? A. Yes.

Q. And that is true of where that statement appears all the way through this account, is it not? A. Yes.

Q. And when it appears as "Cks" or "check," it means that the credit was of a check or checks at that date? A. Yes, sir.

Q. On the deposit slips which were put in evidence, beginning with the first one, October 1, 1897, Mrs. G. Bucker, is that the name? A. Yes.

Q. What would that represent? A. Her check.

Q. The next one, without date, "Av"? A. Avails.

Q. And what does the "Dft" on that mean? A. That means there was a draft sent for the difference to the owners of the note.

Q. And the same is true of the other notations that appear upon the different ones of the deposit slips? A. Yes, sir.

Q. Sometimes the names appear, and that indicates whose check it was? A. Yes.

Q. Sometimes "avails," and that means it was the discount of a note? A. Yes, sir.

Q. Sometimes "Cash"? A. Yes, sir.

Q. Where it appears above the blank space there, that represents currency, does it not? A. Yes, sir.

Q. That is, if the figures appear there? A. Yes, sir.

Q. What does the one of "Olean \$59.68" mean? A. A check on Olean.

Q. I call your attention to the one that has "Avls \$2,897.85" and below that "Forestville"? A. Yes, sir.

Q. What would that indicate? A. That was a note that was sent to Forestville.

Q. That is the avails of the note? A. Yes.

Q. And those were credited to Mr. Ball in his account, were they not? A. Yes.

Q. I call your attention to one "Taylor, P. M.," checks of \$51.67, \$51.67, \$46.66; total, \$150; were those postmaster's checks? A. Yes, sir.

Q. And the one of May 3, 1900, were the avails of that note that was discounted again, were they not? A. Yes.

Q. And the one of January 9, 1901, as \$152.85, was made up of postmaster's checks, was it not? A. Yes, and in cash, too.

Q. \$2.85 cash? A. Yes, sir.

Q. Now it is a fact, is it not, Mr. Green, that in September, 1896, this note of \$1,700, or about that, was made and discounted by your bank? A. Yes, sir.

Q. And to those credit were the avails of that note placed in your bank? A. I could not tell you; Mr. Ball's account does not run back that far; I cannot tell that.

Q. Well, later than that, two other notes were made, were they not, that were discounted by the bank? A. Yes, sir; \$800 and \$757.16, is it?

Q. Yes. A. Yes, sir.

Q. And finally in the month of September, 1898, those were all put together in this large note of three thousand and some odd dollars? A. Yes, sir.

Q. And to whose credit did the avails of that note go? A. F. P. Ball.

Q. Your discount book shows that, does it not? A. It does.

Q. Now will you read the entry of which you have a transcript from the discount book? A. The number of the note was 4285; note made by F. P. Ball; endorsed by Etta E. Hooker; dated September 10; payable 90 days after date; due September 9; total amount of the note \$3,085.60; interest \$45.60, leaving the net proceeds \$3,040.

MR. CARR: That should be December 9, as to due; it says September and it should be December.

Q. And it was for those net proceeds that Mr. Ball had a credit? A. He did.

Q. And when that was done the other notes that were consolidated in that were taken up, were they not; that is, they disappeared so far as the bank was concerned? A. Yes, charged up, aggregating \$3,090.62.

Q. Does that appear that it went to the credit of F. P. Ball; I understood you to say it does not read that? A. It does; yes, sir; the discount book shows that.

Q. I understood you to say that note fell due on December 9, 1898? A. Yes.

Q. And was it then renewed? A. Yes, sir.

Q. I do not mean the whole of it, but there was some small reduction, and it was renewed for a part? A. Yes, sir.

Q. I show you a note and ask you if you are able to say whether that is the note that was renewed in December, 1898? A. I should say that it was; yes, sir.

Q. And in whose handwriting is that written part of that note? A. My handwriting.

Q. And you know the signature of Mr. Ball? A. Yes.

Q. Are you acquainted with the signature of Mrs. Hooker? A. I am.

Q. Etta E. Hooker? A. I am.

Q. And the endorsement is in her handwriting, is it not? A. Yes, sir.



Q. And that note appears to have been subsequently paid? A. Yes, sir.

Q. Now I understand you to say that this note went out of the Fredonia Bank to the bank at Forestville? A. Yes.

Q. I asked you in whose handwriting that written part was and you said in your own; does that include the "with interest" at the bottom? A. Yes, sir.

(The note was marked "Exhibit B," for identification.)

Q. Now, you have given the history of that note from that time on to the close of 1899; what happened with reference to the relations between Mrs. Hooker and the bank in November and December, 1899, so far as this note was concerned? A. She was released as endorser.

Q. Now, have you here the minute book of the proceedings of the board of directors of the bank which would show what was done in that matter? A. I have it at the hotel; yes, sir.

Q. It is not up here? A. No, sir.

Q. And did she at any time appear as an endorser upon that note after December, 1899? A. She did not; no, sir.

Q. Or upon any renewal of it? A. No, sir.

Q. The note was renewed in January, 1900, without her being a party to the note? A. Yes, sir.

Q. Now, my question is whether at any time after that she was a party to that note or to any renewal of it? A. She was not.

Q. A party in any shape or form either as endorser, maker or guarantor? A. No, sir.

Q. Was Warren B. Hooker at any time after January, 1900, a party to that note as a maker, endorser or guarantor? A. He was not.

Q. And had he been at any time a party to that note or any part of that note except the one of \$1,700 in 1896? A. The liability book shows that he was indorser upon one of the notes indorsed by Mrs. Hooker, which shows here.

Q. And when was that? A. 1896.

Q. And after that he was not a party to the note at all, was he? A. No, sir.

Q. Then my question is whether, at any time after 1896, Warren B. Hooker appeared as a party to this note? A. He did not.

Q. Either as the maker, the guarantor or endorser? A. No, sir.

Q. At the time when Mrs. Hooker was released on this note you were the cashier at the bank? A. Yes, sir.

Q. You were acquainted with the arrangement that was made in regard to it, were you not? A. Yes, sir.

Q. Was there any understanding, either expressed or implied, open or secret, that she was in any way to be held responsible for or chargeable with any part of that note after that time? A. No, sir.

Q. Or any other person except Ball, the maker of the note? A. No, sir.

RE-DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Green, will you furnish this committee a tabulated statement showing at the time of this renewal the amount paid, as follows: first, the amount of note due, consisting of principal so much, interest so much, amount paid on note, number of new note? A. Yes, sir.

Q. Will you take that for your information, Mr. Green (handing paper)? A. Yes, sir.

MR. CARR: Now we go over to page 434.

MR. CARR: In the first place, in connection with the examination of Mr. Green, I now offer in evidence what was marked as "Ex. B," for identification, the first renewal of that note. That was given in September, 1898.

(In pencil) 45.05.

\$3002.80.

Fredonia, N. Y., Dec. 9, 1898.

(In pencil) 3047.85

Ninety days after date I promise to pay to the order of Etta E. Hooker, Three thousand two 80-100 dollars at Fredonia National Bank, value received.

With int.

(In pencil) 3-9

F. P. Ball.

62 cents in Internal Revenue stamps cancelled.

Endorsed on reverse side: Etta E. Hooker.

(In pencil) (First renewal)

The note is cancelled, showing it was paid.

Q. Now, Mr. Green, on your examination the other day you gave what appeared from the discount book of the bank in regard to this note when it was originally discounted at the Fredonia National Bank? A. Yes.

Q. What is the discount book of a bank, Mr. Green? A. It is the book upon which the record, the full record of a note is placed.

Q. That contains, in the first place, the number of the discount? A. Yes, sir.

Q. The date of the note? A. Yes, sir.

Q. Its amount? A. Yes, sir.

Q. The maker of the note? A. Yes, sir.

Q. The persons who are endorsers, if there were more than one? A. Yes, sir.

Q. And when due? A. Yes, sir.

Q. And also shows the avails of the note and to whose credit those avails went, does it not? A. Yes, sir.

Q. Now, assuming that a note has been discounted by the bank and when it falls due is renewed, the bank still being the holder of the note, would this subsequent renewal appear upon the discount book? A. Yes, sir.

Q. Assuming, however, that that note is not held by the bank but goes out of it, then would the subsequent renewals of the note appear upon the discount book? A. No, sir.

Q. And they would not, even though the note was payable at that bank, would they? A. No.

Q. Would there be any account or book in the bank upon which the history of a note while it was out of the bank would appear?

A. No, sir.

Q. Now, Mr. Green, in the month of December, 1899, state whether that bank held obligations upon which or to which Etta E. Hooker was a party, either directly or indirectly, other than this Ball note? A. Yes, sir.

Q. Is it a fact that the bank at that time had some obligations or an obligation of Warren B. Hooker? A. It did.

Q. In the month of December, 1899, was any proposition made to the bank by Mrs. Hooker for a transfer of property to the bank to clean up all of those obligations? A. There was.

Q. And was that a proposition that was made at the suggestion of the bank or one that came from her without suggestion? A. Came from her.

Q. Was that matter given consideration by the directors of the bank? A. It was.

Q. And subsequently, in the month of December, was the proposition that was made by her accepted by the bank? A. It was.

Q. I show you a book (showing book to witness), what is the book that I show you? A. The minute book, the record book of the bank.

Q. It contains a record of the proceedings of the board of directors of the bank? A. Yes, sir.

Q. At the page which is open before you do the proceedings of the directors of the bank of December 18 appear? A. Yes, sir.

Q. And on the same page do the proceedings of the board of directors for December 30 appear, or commence on that page? A. Yes, sir.

Q. And go over to what page? A. Page 19.

Q. Then upon what pages of that book appear the proceedings of the board of directors of December 18 and December 30, 1899? A. Sixteen, seventeen, eighteen and nineteen.

MR. CARR: On top of page 437.

I now offer in evidence the proceedings in the minutes of the board of directors so far as they relate to these matters, of

December 18, 1899, and December 30, 1899, as they appear as has already been said on pages 16, 17, 18 and 19 of this book.

“ Meeting of Directors of the Fredonia National Bank, held at office at 2.30 p. m., Monday, December 18, 1899.

Present: R. H. Hall, H. W. Thompson, M. M. Fenner, Mary T. Putnam, Rubie L. Abbey, O. M. Hall, T. J. Skidmore, A. R. Moore, and F. R. Greene.

Minutes of last meeting read and approved. Mr. Greene stated that the object of the meeting was to discuss a proposition made by Mrs. W. B. Hooker to release her upon all paper made and indorsed by her discounted through the Fredonia National Bank; also the paper made by W. B. Hooker by turning over to bank certain interests held by her in Oil Properties. The general opinion was that it required too much money to put the matter through on the lines of the proposition made by them and Mr. Greene was requested to have a further talk with them with the idea of reducing their proposition to the extent of about \$5,000 and report to the board at a later meeting.

Nothing further being brought before the meeting, same was adjourned without date.

F. R. GREENE,

Cashier and Secretary Board of Directors.”

“ Meeting of Directors of the Fredonia National Bank, held at office, December 30, at 2.30 p. m.

Present R. H. Hall, M. M. Fenner, Rubie L. Abbey, O. M. Hall, Mary T. Putnam and F. R. Greene.

Minutes of last meeting read and approved.

The cashier read report of earnings for past six months. After the Board remained in session without business awaiting the arrival A. T. Fancher, President of the Seneca Oil Company, who had been invited to appear before the Board by the cashier in order that any questions might be asked him in regard to property of the Seneca Oil Company, a portion of the stock of which company this bank contemplated taking in liquidation of certain claims against Etta E. Hooker and Warren B. Hooker.

Mr. Fancher arrived somewhat late and was questioned by the various members of the Board fully in relation to the titles, production, expenses, etc., bearing out the statements made by Mr. Greene at the last meeting. After Mr. Fancher retired the following resolution was unanimously adopted:

Resolved, That the officers of this bank be and they are hereby authorized and instructed to accept the proposition of Etta E. Hooker to give \$24,000 of the capital stock of the Seneca Oil Company in full liquidation of her notes amounting to \$2,000;

MR. COMAN: Mr. Carr, that should be \$20,000.

MR. CARR: \$20,000.

(Mr. Carr resumed reading.)

Also the note made by F. C. Laing, amounting to about \$2,000, and to release her as endorser upon the notes of Charles Ehmke of about \$1,900, F. P. Ball about \$2,600, and William B. Barker about \$1,600, she turning over to the bank the security she holds for the Ehmke note. In addition to the above the note of Warren B. Hooker of about \$31,000 held by this bank.

After the above was passed a dividend of 3½ per cent. was declared upon the capital stock of the bank, payable January 2, 1900.

F. R. GREENE,

Secretary and Cashier, Board of Directors."

MR. CARR: Minutes of meeting of directors January 9, 1900, following the meeting of stockholders. All that was read of that was this:

"Meeting of Directors of the Fredonia National Bank, following stockholders' meeting.

Present: R. H. Hall, P. J. Skidmore, M. M. Fenner, O. M. Hall, Rubie L. Abbey, A. R. Moore, Mary T. Putnam and F. R. Greene.

Minutes of last meeting read and approved."

Q. Now, Mr. Greene, you have heard read the resolution that was passed by the board of directors, was the stock mentioned in that resolution turned over to the bank? A. It was.

Q. What was done by the bank with reference to these obligations that were mentioned in the resolution? A. Mrs. Hooker was released upon her paper upon which she was maker; that is, that was surrendered to her and she was released as indorser on the other paper.

Q. That included the Ball note? A. Yes.

Q. How soon was that done after the passage of this resolution, which was December 30, 1899? A. I think almost immediately.

Q. It was within a few days, was it not? A. Yes, sir.

Q. At all events, when the 10th of January came around, 1900, and the Ball note fell due, she was not called upon to indorse that note? A. She was not.

Q. And never did appear upon that note afterwards? A. She never did.

Q. Did you continue as cashier of the bank from that time down? A. Yes, sir.

Q. Are you able to say whether the bank from this security realized sufficient to make it good upon these obligations? A. It did.

Q. Upon all the obligations that were mentioned here, these notes of which Mrs. Hooker was the maker and the note of which W. B. Hooker was the maker? A. Yes, sir.

Q. Now, Mr. Greene, have you a statement which will show the renewals of the Ball note and its reductions? A. I think I have (producing paper).

Q. Is the paper that you have there now one which shows the history of this note in its different reductions from time to time? A. Yes, sir.

Q. Pardon me for looking over your shoulder, and calling your attention to it. What appears on the first column to the left? A. Date of the note.

Q. And the next column? A. Time of maturity.

Q. That is marked "due?" A. Yes, sir.

Q. The next column? A. The face of the note.

Q. The next column? A. That would be the face of the note.

Q. Would it be discounted? A. Face of the note, interest or discount is in this column (indicating).

Q. Wouldn't it be the face of the note less the discount? A. Yes, sir.

Q. That is, it would be the amount that would be credited to the party who had the note discounted, wouldn't it, the avails? A. Yes, sir.

Q. Now the next column? A. Interest, discount or interest.

Q. The next column? A. Total amount paid including discount.

Q. From that paper can it be figured out the amount to which this note was reduced from the time it bore date in September, 1898, down to the time that Mrs. Hooker ceased to be endorser upon the note? A. Yes, sir.

Q. Can it also be figured out the amount the note was reduced to the time Mrs. Hooker ceased to be endorser down to the present time? A. Yes, sir; those figures show it.

Q. I take it, Mr. Greene, that is not,—the figures there are not in your handwriting? A. No, sir.

Q. Are you sufficiently familiar with the matter to be able to say they correctly state the matters that appear there? A. I think they do.

MR. CARR: That paper was marked in evidence and appears on pages 442 and 443. I suppose it may be marked here now.

THE PRESIDENT: It will not be read unless requested.

MR. COMAN: Exhibit F, as follows:

#### STATEMENT SHOWING DATA OF BALL NOTES.

Date of note.	Due.	Amount.
Sept. 10, 1898	Dec. 9, 1898	\$3,085.60
Dec. 9, 1898	March 9, 1899	3,047.85
March 9, 1899	July 9, 1899	2,955.81
July 9, 1899	Oct. 10, 1899	2,795.30
Oct. 10, 1899	Jan. 10, 1899	2,684.10
Jan. 10, 1900	April 10, 1900	2,574.58
April 10, 1900	July 10, 1900	2,461.46
July 10, 1900	Oct. 10, 1900	2,346.16



Date of note.	Due.	Amount.
Oct. 10, 1900	Jan. 10, 1901	\$2,222.85
Jan. 10, 1901	April 10, 1901	2,101.05
April 10, 1901	July 10, 1901	1,979.30
July 10, 1901	Oct. 10, 1901	1,852.40
Oct. 10, 1901	Jan. 10, 1902	1,725.60
Jan. 10, 1902	April 10, 1902	1,599.60
April 10, 1902	July 10, 1902	1,441.30
July 10, 1902	Oct. 10, 1902	1,278.90
Oct. 10, 1902	Jan. 10, 1903	1,137.15
Jan. 10, 1903	April 10, 1903	975.00
April 10, 1903	July 10, 1903	900.00
July 10, 1903	Oct. 10, 1903	800.00
Oct. 10, 1903	Jan. 10, 1904	800.00
Jan. 10, 1904	April 10, 1904	775.00
April 10, 1904	Oct. 10, 1904	775.00
July 10, 1904	Oct. 10, 1904	775.00
Oct. 10, 1904	Jan. 10, 1905	725.00
Jan. 10, 1905	April 10, 1905	700.00

Face	Avails.	Dis or Interest.	Total Amt. paid Inc. Dis.
\$3,040.00 & int.	\$3,040.00	.....	.....
3,002.80	3,002.80	\$45.05	\$82.80
2,897.85	2,897.85	57.96	150.00
2,753.99	2,753.99	41.31	201.80
2,644.43	2,644.43	40.26	150.89
2,536.53	2,536.53	38.03	147.57
2,425.08	2,425.08	36.38	149.50
2,311.49	2,311.49	34.66	149.97
2,190.00	2,190.00	32.85	156.16
2,070.00	2,070.00	31.05	152.85
1,950.05	1,950.05	29.25	151.00
1,825.02	1,825.02	27.37	154.28
1,700.09	1,700.09	25.51	152.31
1,570.05	1,570.05	23.55	155.55
1,420.00	1,420.00	21.30	173.60
1,260.00	1,260.00	18.90	181.30
1,120.34	1,120.34	16.80	158.56
975.00	960.37	14.63	176.78
900.00	886.50	13.50	88.50
800.00	788.00	12.00	112.00
800.00	788.00	12.00	12.00
775.00	763.17	11.83	36.83
775.00	763.17	11.83	11.83
775.00	763.17	11.83	11.83
725.00	714.12	10.88	60.88
700.00	689.50	10.50	35.50

MR. CARR: Now on page 444, shall I read that, Mr. Coman, in regard to this amount.

MR. COMAN: Yes.

MR. CARR (continuing): "MR. CARR: Now, Mr. Coman, if there is no objection I would rather have it taken right in the minutes now from that, so it is easily ascertainable, that the amount paid on the note from the time it bore down to the time Mrs. Hooker was released as endorser, I mean of the principal, is \$401.48.

MR. COMAN: If you put some dates in, Mr. Carr, I think we can agree about it.

MR. CARR: From September 10, 1898. Nothing was paid until the note fell due December 9, 1898. Then something was paid from that time down until October 10, 1899. Including her last renewal when she was endorser the reduction on the principal was \$401.98, and from January 10, 1900, the first time the note was renewed without Mrs. Hooker being on it as endorser down to the present time, \$1,984.15 of principal has been paid, and there is \$185.11 interest paid.

MR. CARR: Will you take in addition to that, Mr. Coman, that the principal paid after January 10, 1900, down to the present time \$1,984.15 of principal and in addition to that \$445.65 of interest was paid since January 10, 1900."

MR. CARR: I suppose that may be taken as a concession?

MR. COMAN: Yes.

MR. CARR (continuing): Q. I understood you to say the other day, Mr. Green, that you had known Ball for quite a good many years? A. Yes, sir.

Q. How many years? A. Twenty years or more.

Q. And I also understood you to say you have been cashier of the Fredonia bank for 40 years? A. Yes, sir.

MR. COMAN: That 40 years is evidently a mistake.

MR. CARR: Yes, sir, 20 years I think it should be.

MR. CARR (continuing): Q. And I also understood you to say you have been cashier of the Fredonia Bank for twenty years? A. Yes, sir.

Q. Then had you known Ball very nearly the whole length of time you were cashier of the bank? A. Yes, sir.

Q. Where had he been living during that time? A. Fredonia.

Q. During the whole of the time you had known him? A. I think so.

Q. He was living there when you first knew him? A. Yes, sir.

Q. Are you able to say whether or not he ever worked in the bank? A. He did.

Q. And when was that, I mean in the Fredonia Bank? A. I don't believe I could tell you; several years ago.

Q. And was employed there for a considerable period of time? A. He was.

Q. Who was president of the bank at that time? A. I think Mr. Abbey, Chauncey Abbey.

Q. Was he related to Mrs. Hooker? A. He was.

Q. What was the relationship? A. Father.

Q. Mrs. Hooker's father? A. Yes, sir.

Q. Now, was Ball a married man having a family living there at Fredonia? A. At the time he was employed in the bank?

Q. No, not then, but later. A. Yes, sir.

Q. How long a time have you known he has been a married man living there with his family? A. Since his marriage, whenever that was. ●

Q. I suppose that is true? A. I don't know when it was, what year.

Q. Has it been several years? A. Yes, sir.

Q. Has he a place there except where he lives? A. Not but what he resides in.

Q. Has he at any time? A. I think not.

Q. Did he own a vineyard or something of the kind there? A. Yes, sir.

Q. And about how large was that? A. Well, I don't know as I can tell, five or ten acres.

Q. That is quite a country up there for raising grapes, isn't it?  
A. Yes, sir.

Q. Vineyards are the order of the day up in that region, I take it? A. Yes, sir.

Mr. Coman then read the questions and Mr. Stevens the answers from the re-direct examination of Mr. Greene, commencing on page 446, as follows:

Q. Now, Mr. Greene, I wish to begin with the note that was dated September 10, 1898. The face of the note was \$3,040, was it? A. Yes, sir.

Q. That came into your bank the 7th day of October, that same note? A. I believe so. The dates were given the other day. I can't just——

Q. I will show you a transcript of Ball's account that was furnished by you, was it not (paper shown witness)? A. I think so. The other one was made by our bookkeeper the other day and was absolutely verified.

Q. I have compared them? A. They are alike, are they?

Q. Yes.

MR. CARR: Better show him the one produced the other day, Mr. Stevens, and then we won't get mixed up.

Q. Mr. Greene, I show you the account of Arthur R. Moore with the Fredonia National Bank (paper shown witness), and ask you if it does not show that \$3,040 note was discounted by your institution on the 7th day of October, 1898?

THE WITNESS: You got the wrong name. ●

Q. I mean Frank P. Ball? A. Yes.

Q. The 7th day of October, 1898? A. Yes, sir.

Q. Now it came due what date? A. That came due December 9th.

Q. 1898? A. Yes, sir.

Q. What was the amount that was due on that note at that time; just give the figures? A. \$3,047.85, assuming these are correct.

Q. Wasn't the \$3,085.60 due at that time? A. Oh, yes; that note.

Q. How much was paid on that note at that time? A. \$82.80.

Q. \$82.80? A. Is that right?

Q. Yes, those are the right figures. A. Yes.

Q. What made up that \$82.80? A. I could not tell you.

Q. Now I ask you to look at the account of Arthur R. Moore, postmaster, kept in your bank at that time on the 10th day of December, 1898, and see if he is not charged with \$82.80? A. He is.

Q. Did you hear Mr. Moore's testimony? A. I did not.

Q. Mr. Moore's testimony discloses the fact that on the first day of November, 1898, he gave Mr. Ball a check for \$32.80 and on the 1st day of December, 1898, a check for \$50 on account of services. Would the aggregate of those two checks be \$82.80? A. It would.

Q. Would such checks, if any, be charged up to Mr. Moore's account? A. They would.

Q. What is your impression now as to whether those checks were checks given by Mr. Moore to Mr. Ball which paid the \$82.50? Have you any recollection? A. I haven't any recollection; no, sir.

Q. Now the second note, the renewal was dated what day? A. December 9, 1898.

Q. What was the face of the note? A. \$3,002.80.

Q. It became due when? A. March 9, 1899.

Q. How much was the interest on that note from December 9 to March 9, the three months it run? A. \$45.05.

Q. What was the total amount due? A. \$3,047.85.

Q. How much was paid at that time? A. \$150.

Q. Do you know how it was paid? A. I don't; no sir.

Q. I show you a deposit slip, in whose handwriting is that? A. It is in mine.

Q. Is that a deposit slip of Mr. Ball's? A. Yes.

Q. I wish you would read it? A. Deposit, by F. P. Ball, Fredonia National Bank, March 9, 1898, cash, five dollars; A. R. Moore, postmaster, \$50.11; another check, \$50; another, \$45.90; total, \$151.01.

Q. Those three checks were all checks of Mr. Moore as postmaster? A. Yes, sir.

Q. They were all applied on this note? A. They were placed to his credit.

Q. Was the note charged up to his account at the same time? A. What date was that?

Q. March 9, 1899. A. There was the note charged or a charge on March 9, 1899, of \$3,047.85.

Q. That was the amount of the note due at that time, was it not? A. Yes, sir.

Q. And he was credited that day with those checks and cash \$151.01, wasn't he? A. It says here \$3,048.86.

Q. No, look at that a moment? A. There may have been two credits on that date.

Q. Here is the account which you gave, is it not? A. That was drawn up by—

Q. Is that a copy of the bank account which you furnished the Committee of the Bar Association? A. I can't say that was drawn off by Mr. Ball. It is in his handwriting.

Q. Do you see there under date of March 9, 1899, a credit to Mr. Ball of \$151.01? A. Yes, sir.

Q. That is the amount on the deposit slip, isn't it? That is the amount on the deposit slip.

Q. Then you say under the same date you credited Mr. Ball with \$2,897.85? A. Yes, sir.

Q. That was the avails of another note, wasn't it? A. It would seem to be.

Q. See if those two sums don't exactly make up that amount? A. \$3,048.86; yes, that would be correct; yes, sir.

Q. Then the transaction that day was he was charged up with the full amount of the note due at that time, was he not? A. Yes, sir.

Q. And credited with those checks and credited with the avails of the note? A. Yes, sir.

By MR. STANCHFIELD:

Q. Credited with the avails of the renewal note? A. Yes, certainly.

By MR. STEVENS:

Q. Now, what was the face of the new note that was given that date? A. \$2,897.85.

Q. When did that become due? A. March 9, 1899.

Q. No, that is the date of the note? A. Oh, yes, July 9, 1899.

Q. Four months? A. Yes, sir.

Q. What was the interest on that note July 9, 1899? A. \$201.80—\$41.31—no, \$57.96.

Q. What was the total amount due on that note July 9, 1899? A. \$2,955.81.

Q. Was it paid actually that day or the next day, July 10th? A. I could not tell you that without going through his account.

Q. Look at this (indicating on paper)? A. Whatever that says there, it was \$2,955.81, wasn't it?

Q. It was actually renewed July 10th? A. Yes, sir.

MR. CARR: That was the day afterwards, wasn't it?

THE WITNESS: Yes, sir.

Q. How much was actually paid on that note that day? A. \$201.80.

Q. Do you know what that was? A. I don't.

Q. I ask you to look at Mr. Moore's account (showing paper to witness) and see if he was charged July 11th, with a check for \$203.25? A. There is a charge there of that date of that amount, yes, sir.

Q. Do you know what that check was? A. I don't.

Q. Do you know whether it was a check that was given by Mr. Moore to Mr. Ball? A. I don't.

Q. Do you know whether Mr. Ball paid any cash that day? A. I don't, no, sir.

Q. Now the unpaid portion of the note was renewed July 10, 1899, was it not? A. Yes, sir.

Q. What was the face of the note, dated July 10, 1899? A. Well, it is dated July 9, 1899, it may not have been renewed until the 10th, the date would be back one day.

Q. How did it happen to become due on October 10th? A. I don't know.

Q. Didn't you probably date it the day after? A. Maybe it was.

Q. It came due October 10th? A. Yes.

Q. It is dated either July 9th or 10th, was it not? A. Yes, sir.

Q. What was the face of it? A. \$2,753.99.

Q. That became due October 10, 1899? A. Yes, sir.

Q. What was the interest? A. \$41.31.

Q. The total amount due that day? A. \$2,795.30.

Q. How much was paid at that time? A. \$150.87.

Q. \$150.87 was paid at that time? A. Yes, sir.

Q. Do you know how it was paid? A. I could not tell you, no, sir.

Q. Will you kindly refer to Mr. Moore's account of October 11th and see if he was charged that day with \$150? A. He was, \$150.

Q. That was his account, postmaster account? A. Yes, sir.

Q. I am referring to that, Mr. Greene, all the time? A. Yes, sir.

Q. Now, how much was left unpaid after crediting \$150.87? A. \$2,536.53.

Q. No. A. \$2,644.43.

Q. When was that due? A. January 10, 1900.

Q. What was the interest on it? A. \$40.26. This note was given January 10th, you are speaking about?

Q. Yes. I am speaking of the note that was dated October 10, 1899, and became due January 10, 1900, the face of that is \$2,644.43? A. \$2,644.43.

Q. How much interest? A. \$40.26.

Q. Now, what was the total amount due January 10, 1900? A. \$2,644.43.

Q. No, that is the face of the note you told us? A. Oh, \$2,684.10.



Q. How much was paid on the note at that time? A. That is just what I read, isn't it, \$2,684.10?

Q. No, \$147.57.

Q. Do you know how that was made up? A. I don't.

Q. I wish you would look at the account of Mr. Taylor, as postmaster at your bank and see if he was charged on January 13th with checks to the amount of \$84.79 (showing paper to witness).

A. He was.

Q. Do you know whether those checks had any connection with this matter or not? A. I don't.

Q. You don't know whether there was more than one check? A. I don't know, I don't know anything about any of those items.

Q. I wish you would look in Mr. Moore's account and see if he was charged November 29th with \$65.21? A. He was.

Q. There was a check issued by him? A. I presume so.

Q. Now, was there a renewal note given that day?

Q. What was the face of the note given in renewal January 10, 1900? A. \$2,536.53.

Q. When did it become due? A. April 10, 1900.

Q. What was the amount due April 10, 1900? A. \$2,574.58.

Q. How much was paid on that note on that date, April 10, 1900? A. \$149.50.

Q. \$149.50 you say, Mr. Greene? A. Yes, that is what this shows.

Q. What was the amount of that renewal? A. \$2,311.49.

Q. No. A. \$2,425.08.

Q. That was the face of the renewal note? A. Yes, sir.

Q. Now, I ask you if that transaction was run through Mr. Ball's account at the bank? A. I could not tell you that (looking at paper). Yes, sir; it was.

Q. I show you an undated deposit slip (showing paper to witness) and ask you in whose handwriting that is? A. Mr. Cummings.

Q. A clerk in the bank? A. Yes, sir.

Q. Read it please? A. Credit by three credits.

Q. Credited to whom? A. F. P. Ball. Deposit in Fredonia National Bank, three checks made by Taylor, postmaster, \$51.67, \$51.67, and \$46.66, total \$150.

Q. Just three months pay to Mr. Ball? A. I don't know, I suppose so.

Q. Now look at April 16th in Mr. Taylor's account (showing paper to witness). A. Yes, sir.

Q. Is he charged that date with \$150? A. He is.

Q. Now, what was the amount of the renewal note dated April 10, 1900? A. \$2,425.08.

Q. When did it mature? A. July 10th.

Q. What was the amount due July 10th? A. \$2,461.42.

Q. How much was paid on that day? A. \$149.50.

Q. Now, what was the face of the renewal note dated July 10? A. \$2,311.49.

Q. When due? A. October 10, 1900.

Q. What was the amount due at that time? A. \$2,346.16.

Q. What was paid on it? A. \$149.97.

Q. Are you sure of that? A. That is the way it shows.

Q. Haven't you got your eye on the wrong figures, what is the interest? A. \$34.66.

Q. How much did that make? A. \$24.46.

Q. Wasn't the amount that was paid \$156.16? A. That was the following, that is the next one.

Q. Now I am asking for the one that was due October 10, 1900? A. Yes.

Q. The note dated July 10, 1900, the face of the note was \$2,311.48? A. Yes, sir.

Q. That became due October 10, 1900? A. Yes, sir.

Q. The amount due at that time was \$2,346.16, wasn't it? A. Yes, sir.

Q. Now, my further question is, how much was paid at that time, at the maturity of the note, 10th of October, 1900? A. \$156.16.

Q. There was paid October 10, 1900, \$156.16? A. Yes, sir.

Q. I show you a deposit slip in favor of F. P. Ball, dated October 10, 1900 (paper shown witness), that is the same date, isn't it? A. Yes, sir.

Q. Tell us what is on that slip? A. Check of M. H. Taylor, postmaster, \$50.54.

Q. It was credited to Mr. Ball? A. Credited to his account,—and another \$50.54 and check on the Merchants Bank of Dunkirk \$16.16.

Q. That amounts to how much? A. \$107.24.

Q. That was credited to Mr. Ball that day? A. Yes, sir.

Q. Then the 15th, did you credited Mr. Ball with \$48.92? A. Yes, sir.

Q. What is the amount of \$107.24 and \$48.92? A. \$156.16.

Q. That is just the amount of the payments on the note, wasn't it? A. Yes, sir.

Q. Now, was there a renewal note given October 10, 1900? A. Yes, sir.

Q. What was the face of it? A. \$2,190.

Q. When did that become due? A. January 10, 1901.

Q. What was the amount due that day? A. \$2,222.85.

Q. How much was paid on it? A. \$152.85.

Q. I show you a deposit slip dated January 9, 1901, in favor of F. P. Ball (showing paper to witness), I wish you would read it? A. Deposited Fredonia National Bank by F. P. Ball, January 9, 1901, cash, \$2.85. M. H. Taylor, postmaster, P. M. \$48.92, \$50.54, \$50.54. ●

Q. I notice they are M. H. T., those checks? A. Yes, sir.

Q. Those checks made just \$150, didn't they? A. Yes, sir.

Q. The total deposit, \$152.85, that is just the amount paid on the note, isn't it? A. Yes, sir.

Q. That is the way it was paid on the note, with that deposit, wasn't it? A. It was credited to his account, I assume it was.

Q. Look at the account and see if he was not credited with the avails? A. What date was that?

Q. January 10, 1901? A. Yes, sir.

Q. Now he was charged with the amount of the old note, wasn't he? A. Yes, sir.

Q. And credited with the avails of the new note \$2,070? A. \$2,070.

Q. And credited with this deposit of \$152.85, and that made the payment on the note at that time, didn't it? A. Yes, sir, it did.

Q. And January 10, 1901, what was the face of the renewal? A. \$2,070.

Q. When did that become due? A. April 10, 1901.

Q. How much became due that date? A. \$2,101.05.

Q. How much was paid on it that time? A. \$151.

Q. Are you sure it is \$151? A. That is what these figures show. \$151.05, I should think it would have been.

Q. \$151.05 would be the interest, wouldn't it? A. Yes, it might be a mistake in getting it down, \$151.05 is what the interest would be.

By MR. WESTWOOD:

Q. The interest was \$31.05? A. Yes, that is right, \$31.05.

By MR. STEVENS:

Q. I ask you if Mr. Taylor was charged that same day, April 10, in his account with checks of \$150? A. Yes, sir.

Q. What was the amount of the renewal note dated April 10, 1901? A. \$1,950.05.

Q. I guess there must be a mistake of five cents. It might have been \$1,950, might is not? A. Yes, it might.

Q. When did that become due? A. July 10, 1901.

Q. Tell us how much was due on it? A. \$1,979.30.

Q. How much was paid on it that date? A. \$154.28.

Q. Look at Mr. Taylor's account for July 10, 1901, and see how much he was charged with that same day? A. \$150.

Q. How much was the renewal note dated July 10, 1901,—how much did you say was paid on it? A. \$154.28. \$1,825.02, that seems to be a cent off.

Q. These don't seem to quite agree with your other figures, some of them? A. There may be a few cents variation.

Q. The face of the note \$1,825.02. That became due when? A. October 10, 1901.

Q. What was the amount due that time? A. \$1,852.40.

Q. How much was paid on that day? A. \$152.31.

Q. Look at Mr. Taylor's account for October 10, for that same day? A. Charged with \$150.

Q. Taylor was charged the same date with \$150? A. Yes.

Q. Now what was the amount of the renewal note given October 10, 1901? A. \$1,700.09.

Q. When did it become due? A. January 10, 1902.

Q. What was the amount due that day? A. \$1,725.60.

Q. How much was paid that day? A. \$155.55.

Q. How much was the renewal note dated January 10, 1900? A. \$1,570.05.

Q. When did it become due? A. April 10, 1902.

Q. How much was due on it? A. \$1,593.60.

Q. How much was paid on it? A. \$173.60.

Q. Look at Mr. Taylor's account for April 10, 1902, the same date, and tell me how much was charged to him that day? A. \$150.

Q. What was the face of the renewal note dated that day, April 10, 1902? A. \$1,420.

Q. Due when? A. July 10, 1902.

Q. How much was due that day? A. \$1,441.30.

Q. How much was paid that day? A. \$181.30.

Q. Look at Mr. Taylor's account and see if he was charged July 12 with \$150? A. He was.

Q. Now what was the amount of the renewal note dated July 10, 1902? A. \$1,260.

Q. Due when? A. October 10, 1902.

Q. How much was due that time? A. \$1,278.90.

Q. How much was paid that day? A. \$158.56.

Q. What was the face of the renewal note given that day, October 10, 1902? A. \$1,120.34.

Q. When was that due? A. January 10, 1903.

Q. How much was due that day? A. \$1,137.15.

Q. How much was paid at that time? A. \$176.78.

Q. Look at Mr. Taylor's account, date January 13, 1903, and see if he was charged with \$150? A. He was.

Q. Now, December 31, 1902, was the last of Mr. Ball's connection with the postoffice, wasn't it? A. I don't know as to that.

Q. What was the amount of the renewal note given January 10, 1903? A. \$960.37.

Q. What is the date of the renewal note? A. April 10.

Q. What is the face of that renewal note? A. \$886.50—

Q. (interrupting) That is the avails? A. That is what I have been giving—\$975.

Q. When was the next renewal? A. April 10.

Q. That is the column I am asking about (indicating), how much was that for? A. That I have just answered, \$975, was given January 10, due April 10, and one given April 10, due July 10, for \$900.

Q. How much was the renewal of July 10? A. \$800.

Q. What was the next renewal?

MR. HOYT: This is all after Mr. Ball ceased to be in the employ of the government?

THE WITNESS: \$800.

MR. CARR: I renew the objection I made here that whatever may be said with regard to the history of this note during the time he remained in the government's service it is immaterial what may have been done with the note subsequent to his leaving the service.

THE PRESIDENT: Objection overruled.

Q. What is the next renewal? A. \$775.

Q. What is the next renewal? A. \$775.

Q. What is the next renewal? A. \$725.

Q. What is the next renewal? A. \$700.

Q. That is the last? A. Yes, sir.

Q. Now, Mr. Greene, the papers which you produced the other day showed that there was some transaction in 1896, in which a note was given by Mr. Ball to the order of Etta E. Hooker, indorsed by W. B. Hooker, which was for about how much? A. I think \$1,700, about that.

Q. Do you know the transaction that arose out of? A. I think so; that is, I assume it was the purchase price of a piece of Oil property.

Q. Where was that piece of Oil property located? A. I think it was in West Virginia.

Q. Were you concerned, I mean personally, at all? A. No, sir.

Q. I will show you, Mr. Greene, the statement you put in evidence during the day so you can refresh your recollection if you desire (showing paper to witness). What was the date of that note of which we have been talking? A. The first note?

Q. Yes. A. September 10, 1896.

Q. That was indorsed by Judge Hooker? A. The book shows it was, it was indorsed by Mrs. Hooker first, and second by Judge Hooker.

Q. What was the face of that note? A. One thousand six hundred and sixty-six dollars and sixty-six cents, I think.

Q. Now that note was carried along by various renewals until the year 1898, was it not? A. I think so.

Q. To whose credit did that go? A. That does not state.

Q. Does your statement show to whose credit it went? A. No, sir.

Q. Have you any paper here that shows to whose credit it went? A. No, sir.

Q. Then there is nothing in the statement which has been introduced which shows whether the note was discounted for the benefit of Mr. Ball, Mrs. Hooker or Judge Hooker? A. No, sir.

Q. Now was that note carried along by various renewals until the year 1898? A. Yes, sir.

Q. Was one of those renewals in 1898? A. Why, yes, when this consolidation took place.

Q. Do you know how it happened to amount to \$1,666.66? A. I think I do.

Q. State it. A. I think it was one-sixth of the purchase price of the piece of property of which the cash price was ten thousand dollars, this note was made to make, Mr. Ball borrowed this money to make that payment.

Q. Do you know who the parties were who were interested in that property? A. I think there was Mrs. Hooker, Mr. Ball, Mrs. Barker and Mrs. Waterhouse.

Q. Do you know what Mrs. Hooker's interest was in it? A. I don't know that I do.

Q. Do you know what Mrs. Waterhouse's interest in it was? A. I don't know as I remember the divisions. They were in sixths, it may have been two-sixths or three-sixths, this was one-sixth of it.

Q. Now, Mr. Greene, leaving that for a moment, you have stated in response to Mr. Carr's inquiries that in December, 1899, there were negotiations for the release of Mrs. Hooker and Judge Hooker from certain obligations held by the Fredonia National Bank? A. Yes, sir.

Q. What was the amount of the obligation held against Judge Hooker? A. I think the total was, direct and indirect, about \$31,000.00.

Q. What was the amount of direct liability against Mrs. Hooker? A. Well, the total amount held by us possibly and outside which had been negotiated for her amounted to say \$20,000.

Q. For which you were responsible? A. Well, in a way.

Q. What was the amount of contingent liability which you held against Mrs. Hooker? A. Well, those notes that were read there, Mr. Ball's and those notes, I think we took them all, she was released upon all her indorsements by the bank, all liabilities.

Q. Now who first proposed to you any arrangement for such a release, who instituted the negotiation? A. I don't know as I can state, I presume Mrs. Hooker did or Judge Hooker.

Q. Did you have a talk with Judge Hooker upon the subject? A. I presume so, I don't recollect, I presume I did.



Q. Where did you talk with Judge Hooker upon the subject?

A. I don't know, I presume at the bank, I don't remember.

Q. Do you remember where the conversation took place? A. No, I don't.

Q. Did you talk with Mrs. Hooker on the subject? A. Yes.

Q. Where did you talk with Mrs. Hooker? A. I can't say, I don't know.

Q. What was the conversation with Mrs. Hooker? A. (My negotiating for the release of her as maker and endorser upon everything,——

Q. (interrupting) Yes, we understand, you said that, we want to know what was said, what the propositions were you discussed?

A. I can't remember the first proposition. Only the record says,——

Q. (interrupting) You can't remember anything about it, that is about what occurred prior to December 19, the first meeting of the bank directors that considered the subject? A. I don't remember, no, sir, only I know there were negotiations; I don't remember the details at all.

Q. The negotiations relate to an indebtedness of nearly \$60,000 and you don't recollect what they were? A. I don't remember the details of them.

Q. Do you remember the conversation with either person? A. I can't remember any specified, any specific conversation.

Q. What was the first proposition that was made to you in regard to it? A. I think it was to turn over this oil property interest in liquidation of the indebtedness, adding to it about five thousand dollars, that is the records show the directors thought the propositions was about five thousand dollars too much.

Q. I am not asking for what records show, I am asking for your recollection independent of the records. Now I want to know if you can recollect a single word that was said between you and Mrs. Hooker prior to the first meeting of the directors, the minutes of which have been offered in evidence? A. I can't say that I do.

Q. Can you recollect a single word that ever passed between you and Judge Hooker prior to the same meeting? A. I can't say that I do.

Q. Did either of them have any conversation with any other directors of the bank prior to that meeting to your knowledge? A. I don't know as to that.

Q. Have you any information on the subject? A. I should presume they had, I cannot say.

Q. Who was president of your bank at that time? A. R. H. Hall.

Q. He is now president, is he not? A. Yes, sir.

Q. Is he now president? A. Yes.

Q. Where did Mr. Hall reside at that time? A. At Fredonia.

Q. Was he in daily attendance at the bank at the time? A. I think so.

Q. That has been his habit, has it not, since he has been president? A. It has, yes, sir.

Q. Did you ever hear of any conversation between him and Justice Hooker and Mrs. Hooker on this subject, or either of them? A. Did I ever hear of any conversation?

Q. Yes, that they had any? A. I couldn't say that I had or not.

Q. It seems from the minutes which were read there was a meeting on the 19th of December was there not? A. The 18th.

Q. I stand corrected, the 18th, and the proposition, as I gathered from the reading of the minutes, which was made at that time on behalf of Justice Hooker and Mrs. Hooker was stated to the board by yourself? A. Yes, sir.

Q. I gathered that proposition was not entirely acceptable to the board without further information? A. Yes, sir.

Q. What further information did they seek to have? A. Have A. T. Fancher, the President of the Company, appear before the board.

Q. Was there any effort to be made by you or any one else to vary the terms of the proposition made by Justice and Mrs. Hooker? A. Yes, sir.

Q. What was the variation that they wanted in the terms? A. I think it was according to the record about \$5,000.

Q. Well, have you any recollection of your own on the subject? A. I can't say that I have any specific recollection.

Q. Well, you were the executive officer and as such empowered to undertake these negotiations. To start off with did you have a conversation with Mrs. Hooker on the subject? A. Yes, sir.

Q. Did you have one with Judge Hooker on the subject? A. Yes, sir.

Q. Where was the conversation that you had with Justice Hooker held? A. I don't know as I could state, I know it was talked with him, it may have been at the Bank, that is where it would naturally be.

Q. Do you remember the conversation? A. I can't say that I do, no, sir.

Q. Do you remember anything that was said in it? A. Only as to the release of those names and the delivery over of securities.

Q. Was there any talk between you as to the value of those securities which they were contingently liable on as endorsers? A. You mean the notes held by the bank?

Q. Certainly. A. Well, we are supposed to know something about it ourselves.

Q. I am not asking what you are supposed to know but what was said. A. I can't remember what was said.

Q. Can you remember a word being said about the Ball note? A. Why, I have no doubt there was. I can't remember any conversation specially about it.

Q. Do you remember Ball's note being mentioned at all as to the value of the note? A. I can't say that I do.

Q. Do you remember the name of Ball being mentioned between you? A. Probably was, I don't remember. Of course, no doubt all the names were discussed.

Q. Did you discuss anything about the means of payment which Mr. Ball had for paying this note? A. No, sir.

Q. Not a word said upon that subject? A. No, sir.

Q. Was anything said upon the subject of how fast Mr. Ball had been reducing the note? A. Might have been.

Q. Do you think there was? A. I think very likely there was.

Q. What was it? A. Well, I can't say,—you are speaking now of the conversation between Mr. and Mrs. Hooker?

Q. Either of them with you about the Ball note? A. I don't think that was ever discussed between us. I was talking of the Board meeting.

Q. Now, you can't remember the name of Ball was mentioned between you and Justice Hooker in these negotiations? A. I don't recollect that it was.

Q. You can't recollect that it was mentioned between you and Mrs. Hooker in these negotiations? A. No other than she was to be released on that note and all of those other notes.

Q. That would necessarily follow, my question, of course, is broader than that. Now, in the Board meeting was there any talk as to the value of those various securities you held upon which they or either of them were contingently liable? A. Yes, sir.

Q. Mention one of the other notes there. A. Barker.

Q. How much was that? A. I don't recall, the minutes will show that.

Q. Charles Emhke. Where did Charles Emhke reside? A. I think at Silver Creek.

Q. Was the responsibility of Mr. Emhke discussed by your Board? A. It was.

Q. What was said about that? A. I don't recall just what was said about it; there was some security, that note was secured by a mortgage or something of that kind, the record will show, that was to be turned over to the bank.

Q. Was the history of the Ball note discussed with the directors at all? A. Nothing only in a general way.

Q. Did you state to the directors how fast it was being reduced? A. Very likely I might have said something about it.

Q. Being reduced \$150 each three months right along? A. That is what the records show.

MR. CARR: He is asking you what you said to the directors, whether you said that to them. A. No, I can't say I said that, I said that he was reducing the note probably.

Q. Giving them figures? A. Probably gave them figures that would show a reduction of something over \$100 each three months.

Q. Well, the payment of principal and interest was about \$150 each three months? A. Yes.

Q. Now, was this proposition which they made, this statement, reduced to writing at all? A. I think so.

Q. Did you read the written proposition to the Board? A. No, I think not—you mean a written proposition made to the Board? No, sir, I don't think it was ever in writing.

Q. On no occasion? A. No.

Q. It was entirely verbal? A. Yes, sir.

Q. Confided to you by Mr. and Mrs. Hooker and by you confided to the board of directors? A. Yes, sir, that is my recollection of it.

Q. You stated that there were about thirty-one thousand dollars of Judge Hooker's liabilities there? A. Yes, sir.

Q. Was that all one he was directly liable on or was some of it contingent? A. Well, I don't recall, I think it was both ways.

Q. The resolution of the Board doesn't recite anything about that, does it? A. It speaks of his indebtedness.

Q. Doesn't it read this way, "in addition to the Ball note, W. B. Hooker about \$31,000. held by this bank"? A. Whatever it reads there.

Q. Have you any recollection whatever apart from the minutes? A. No, only the minutes and was made from a series of notes payable monthly secured by oil properties.

Q. Now what was it that was to be turned over to the bank in consideration of this release? A. Stock of the Seneca Oil Company.

Q. How many shares? A. 240 I think, \$24,000 whatever it was.

Q. What was the total capitalization of that Oil Company?

A. I don't remember.

Q. That was a corporation, was it not? A. Yes, sir.

Q. What were the assets of the Seneca Oil Company in a general way?

I will change the question, the precise form of the question isn't just what I had in mind.

Q. Now, Mr. Greene, when did you sell that stock? A. When the company was sold, I don't remember just when it was, the entire property was sold.

Q. Don't you remember the year? A. I think it was within a few months after.

Q. You held the stock after a few months? A. Yes.

Q. Did you realize any dividends on it while you held it? A. I think we did, I don't remember now.

Q. Do you know the amount of the dividend? A. I don't recall, no, sir.

Q. All of the stockholders sold their stock at the same time, did they not? A. Yes, sir.

Q. Did you realize any cash from your sale? A. Yes, sir, that is my recollection.

Q. How much cash did you receive for your stock? A. I can't tell you now, I don't remember exactly what it was.

Q. Can you tell approximately how much you got? A. I should say it was around forty odd thousand dollars.

Q. Was the stock sold at a premium? A. Yes, sir.

Q. How much? A. Well I can't tell, the property was sold as a property and then the dividend was made according to the holdings, to wind the business up.

Q. How much did the property sell for? A. I don't remember now what it sold for.

Q. What was your proportion of it? A. I can't tell you exactly, I should say it was forty odd thousand dollars.

Q. No, give the aggregate amount, your proportion? A. You mean the proportion of stock?

Q. Yes. A. I don't remember, I don't know.

Q. Then, in short, you don't remember any figures? A. I don't remember the capital stock, no, sir, I don't know what that was.

Q. Nor how much you received? A. I don't now, I think it was forty odd thousand dollars.

Q. Now, Mr. Greene, in response to Mr. Carr, you stated that when a note was out of your bank there would be no book on which the history of it would appear, did you not? A. I did.

Q. You have given the history of each renewal of this note? A. We got this from Forestville.

Q. Don't it appear on the tickler here. A. The tickler shows a record of it at maturity, I supposed you meant a complete history showing the discount and all of that.

Q. The statement which has been introduced in evidence here gives the date of each renewal, the amount of the renewal and the date of maturity, does it not? A. Yes, sir.

Q. These renewals were all made payable at your bank, were they not? A. Yes, sir, I didn't understand that was it. I didn't consider that history complete.

Q. It is a pretty fair history, isn't it? A. Yes, the maturities all show.

Q. I say that from this statement you have a pretty fair history of that note? A. Oh, yes, sir.

Q. You stated in response to Mr. Carr's question that at some time Ball was employed in the bank? A. Yes, sir.

Q. In what capacity? A. Bookkeeper.

Q. Were you the cashier at the time? A. Yes, sir.

Q. How long was he there? A. I couldn't state, he started as trotter.

Q. A trotter is a boy who runs errands and makes collections around town, I suppose? A. Yes, sir.

Q. How long was he there? A. I should say about a year.

Q. That was all? A. Yes, sir. ●

Q. Was there any special relations between him and Mr. Abbey the President? A. No, sir.

Q. None at all, were there? A. You mean between Mr. Ball and Mr. Abbey?

Q. Yes. A. No, nothing, no special relations.

Q. No more than would be with any other boy in the bank? A. No, sir.

Q. That was away back in the eighties, wasn't it? A. I should say it was around 1890.

Q. As late as that? A. Well, I can't tell, Mr Ball is here, he would remember.

Q. Shortly after you became cashier, wasn't it? A. I would not think it was, I should say some years afterwards.

Q. You have no recollection what year it was? A. No.

Q. It was only a short time, a year or so? A. No, I think he was there longer than that.

Q. How long? A. My judgment would be he was there three or four years.

Q. No. special relation with Mr. Abbey? A. No, sir, not that I know of.

(Mr. Carr read the questions and Mr. Goodrich the answers.)

RE-CROSS-EXAMINATION by MR. CARR:

Q. Now it appears from the history that has been put in here from the history of the bank that is taken from the liability book, that the original note of Ball was September 10th, 1896, and that that was for about \$1,700, was it not? A. Yes, sir, \$1,666.66.

Q. That was one-sixth of ten thousand dollars? A. Yes, sir.

Q. Are you able to say Mr. Greene, who had the proceeds of that note? A. Mr. Ball.

Q. And are you able to say what these proceeds were used for? A. I think I am.

Q. Well, what? A. Cash payments on this piece of property, one-sixth.

Q. This oil property that is mentioned? A. Yes, sir.

Q. Now do you know where that oil property is located? A. I think it was in West Virginia.



Q. And do you know whether it was a property that was partially developed or otherwise? A. It was, it was producing, producing property.

Q. How much was it producing a day? A. I don't know as I can tell you.

Q. But it was producing oil? A. Yes, sir.

Q. And this \$1,666.66 was one-sixth of a \$10,000 cash payment due on the purchase of the property? A. Yes, sir, I am very sure that is it.

Q. So Mr. Ball had the avails of that, it was paid upon that property? A. Yes.

Q. Now was the money borrowed from the bank on that note? A. Yes, sir.

Q. That is, the bank furnished the money? A. The note was discounted there, yes, sir.

Q. Now it also appears here upon this statement that there were some smaller notes that along with that one ultimately went into this \$3,000 note made by all and endorsed by Mrs. Hooker, those notes. Are you able to say who had the avails of those notes? A. I am very sure that Mr. Ball did, but I could not swear positively.

Q. That is your recollection in regard to it, isn't it? A. Yes, sir.

Q. Well, the fact they appear upon the books of the bank would indicate the bank had discounted those notes, would it not? A. Yes, sir.

Q. Now I understand you to say with regard to the disposition of the property of the Seneca Oil Company that it is your recollection that the bank realized in cash upwards of forty thousand dollars? A. That is my recollection.

Q. And its share, because of its holding 240 share of stock? A. Yes, sir.

Q. And that it also realized in addition to that, upon collateral securities that were held upon various ones of these obligations? A. Yes, sir.

Q. Now you spoke of an obligation of Warren B. Hooker amounting altogether to about \$31,000; some of those were notes of which he was the maker? A. Yes, sir.

Q. Some of those were notes upon which he was indorser and contingently liable? A. That is my recollection.

Q. Some of those notes there was securities of different kinds with? A. Yes, sir.

Q. I don't know what the fact is, Mr. Greene, but I ask the question, as to whether Warren B. Hooker had become seriously involved in financial matters prior to that time? A. Yes, sir, he had.

Q. He was seriously involved in financial matters at the time when this transaction took place, was he not? A. Yes, sir.

Q. And when this transaction took place it cleared all the obligations of Warren B. Hooker so far as the Fredonia Bank was concerned? A. I would like to explain here that this indebtedness was made up from a series of notes made or indorsed by him until they aggregated this amount, and were consolidated into one indebtedness.

Q. One thing further. I call your attention now to this table that was given us and ask you to state the payments that were made on this note subsequent to January 10th, 1903. A. You were asked the payments up to that time. Now the figures here April 10th, 1903, what was the amount paid then? A. \$88.50.

Q. How much was paid the next time, July 10th, 1903? A. \$112.

Q. How much was paid October 10th, 1903? A. \$36.83.

Q. And April 10th, 1904? A. \$11.83.

Q. And July 10th, 1904? A. \$11.83.

Q. October 10th, 1904? A. \$60.88.

Q. And January 10, 1905? A. \$35.50.

**RE-DIRECT EXAMINATION by MR. STEVENS:**

(Mr. Coman read the question and Mr. Stevens the answers.)

Q. Just a question, Mr. Greene, when did Mr. Ball first open a bank account with your bank? A. Well, I should say when he went to work there.

Q. Did he have a bank account with you in 1896? A. I think, I can't say, what does this statement show?

Q. The statement shows down to 1897, I will show it to you (handing paper to witness). A. That started from the date that the Committee requested me to furnish this statement, the subpoena asked,—

Q. (interrupting) Take the statement which you furnished to the Bar Association, which was made by Mr. Ball, that commences October 2nd, 1897, an even start? A. This account was balanced at this time.

Q. Was there anything before that, any account there before that? A. I think he had some account.

Q. Are you sure? A. I am not sure; I know he had an account when he worked there.

Q. Oh, yes, but at that time. He had an account during those years at the Merchants' Bank of Dunkirk, did he not? A. I think he did.

Q. I am referring now to 1895 and '6, along there he was conducting a business in Dunkirk, was he not? A. I think so.

Q. And kept an account in the Merchant's bank? A. Yes, sir.

Q. Very close to his place of business? A. Yes, sir.

Q. Have you any reason to suppose he had any account with you in 1896? A. My recollection is that he had, I would not swear.

Q. This first note, Mr. Greene, for \$1,666, who brought that to the bank to discount? A. My impression is that Mr. Ball brought it.

Q. Have you any recollection? A. No, sir.

Q. Have you any recollection on the subject? A. Only I remember the transaction, this was a one-sixth interest,—

Q. (interrupting): No, the note of \$3,040 who brought that to the bank? A. I think Mr. Ball did, he always did.

Q. Can you recollect why he brought the note there on the 7th day of October and the date of the note is the 10th day of September? A. I don't know, no, sir.

Q. Can you give any explanation of that whatsoever? A. My explanation would be this, the other notes matured and then for some reason or other they remained past due until that time.

Q. That is a mere hypothesis? A. That is what you asked me for.

Q. I asked for your best recollection, not hypothesis? A. It isn't a recollection, no, sir.

By MR. CUNNINGHAM:

Q. I understood you to say when the oil property was sold the indebtedness of Mr. Hooker and Mrs. Hooker and Mr. Ball was made good to the bank? A. Not Mr. Ball, she was released on the paper he was indorser upon; that indebtedness was not paid, that remained without her indorsement.

Q. When the stock was sold the bank was made good? A. Not upon the Ball note, not all those other notes.

Q. It was on the large notes of Justice Hooker and Mrs. Hooker? A. Yes, but not upon the notes mentioned there upon which her indorsement was.

Q. Those two notes amounted to \$51,000? A. Yes, sir.

Q. You say you received something like \$40,000, what made up the rest? A. We had other collateral.

Q. What was the other collateral? A. Why that remained with us.

Q. Other oil property? A. Yes, this indebtedness of Judge Hooker was made,—

Q. (interrupting): So when you say the bank was made good you had in mind other collateral it had besides this oil company stock? A. Yes, sir.

Q. I asked you if there was other security in addition to the forty odd thousand dollars you realized from the stock of the oil company? A. Yes, sir.

By MR. CAHN:

Q. This note you speak of, was it payable to Mrs. Hooker or endorsed by her? this one that was brought in in October? A. Yes, sir.

Q. That was brought to you by Mr. Ball? A. Or put to his credit, I can't remember the circumstances.

Q. That note you supposed was a good note? A. Yes, sir.

Q. Did it ever strike you to inquire of any maker why he should bring it to you? A. No, sir, not at all, it is an accommodation note, that is the way people do up our way.

Q. Payable to their order? A. Yes, sir, endorsed by her as an accommodation endorser.

By MR. FISH:

Q. What indebtedness, Mr. Greene, you held of Justice Hooker and Mrs. Hooker, remained over and above the amount given you, secured by the oil property, that is what they were directly liable on, not what they were contingently liable on? A. I can't tell you the exact amount, upwards of ten thousand dollars.

Q. Then you realized in cash and collateral within about ten thousand dollars of the total liability? A. Well, with cash and collateral they were made good.

Q. How much have you realized on the collateral since? A. I don't know as I can exactly state, I think it left upwards of ten thousand dollars, we hold some collateral now.

Q. Was there any written release to Mrs. Hooker made and executed on the part of the bank? A. Why the notes as they matured, the notes were taken without her endorsements, and her notes were given to her so that released her.

Q. Any other writing than the record of the bank proceedings? A. I don't know of any.

By MR. COMAN:

Q. The resolution recites in full liquidation of her, Mrs. Hooker's, notes amounting to twenty thousand dollars. Do you

hold collateral on those notes at this time? A. I can't say now.

Mrs. Hooker is entirely good.

Q. Do you hold any collateral? A. I don't know.

Q. Now did you have any collateral securing the F. C. Laing note of \$2,000? A. I think not.

Q. Did you hold any collateral on the Emhke note of \$1,900? A. We didn't, Mrs. Hooker did.

Q. You did not? A. No.

Q. She held some security, collateral security on that note? A. Yes, sir.

Q. The resolution recites that she was to turn that over to the bank? A. Yes, sir.

Q. Now that was the collateral that was turned over to the bank in this transaction, was it not? A. Yes, sir, that is all as I remember.

Q. So that all you had was the Seneca oil stock and this Emhke collateral so far it was concerned? A. Yes, sir.

Q. Did you have any collateral for the W. B. Barker note, other than her indorsement? A. Yes, we did.

Q. What was it? A. I think that was secured by oil property.

Q. There was no collateral with the Ball note, except her indorsement? A. No, sir, I think not.

Q. Now to come down to Judge Hooker's matters. The resolution recites, in addition to the above, note of W. B. Hooker of about \$31,000. Did you hold any collateral for that? A. Yes, we had some—this note was a combination of notes that were payable a month or two months apart, secured on oil property, they were consolidated.

Q. You surrendered the note, there is nothing in the resolution, you released the indebtedness? A. Well, we had the collateral that was with it.

Q. You didn't surrender that, you can't tell what collateral it was? A. I don't know that I can.

Q. You can't tell the amount of it? A. No, it was on those properties.

Q. Can you tell the amount of it? A. No, I don't know as I can.

Q. Can you tell the amount you realized from it? A. No, I can't.

MR. COMAN: I will now read the testimony of William E. Clark.

DIRECT EXAMINATION.

(Mr. Coman read the questions and Mr. Stevens the answers.)

WILLIAM E. CLARKE, called by Mr. Coman, and being duly sworn testifies:

DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Clarke, you are postmaster at Fredonia, New York?  
A. Yes, sir.

Q. You have been subpoenaed to appear here with certain papers and records from your office? A. Yes, sir.

Q. Have you done so? A. All that I could find.

Q. All that you could find described in the subpoena? A. Yes, sir.

Q. Do you now produce here the pay-rolls of the Fredonia post office from November 9, 1899, down to and including December 31st, 1903? A. Yes, sir.

Q. Do you also produce a letter which you found in the files of your office under date of May 2nd, 1900, addressed to the Postmaster at Fredonia, N. Y. and signed Perry S. Heath, First Assistant Postmaster General, G. W. B.? A. Yes, sir.

Q. Do you also produce a letter under date of January 23rd, 1900, addressed to the Postmaster at Fredonia, N. Y., signed J. M. Masten, Acting First Assistant Postmaster General, C. P. G.?  
A. Yes, sir.

Q. Have you made search in your post office <sup>C</sup> for the pay-rolls during the term of Mr. A. R. Moore? A. Yes, sir.

Q. Have you been able to find them? A. I have not.

Q. What information have you as to where they are? A. I haven't any.

Q. They are not among the files in your office? A. No, sir.

MR. COMAN: We will now read the testimony of Melvin H. Taylor, appearing at page 808, volume 2.

(Questions read by Mr. Hurd and the answers by Mr. Lawyer,) as follows:

MELVIN H. TAYLOR, called by counsel for the Committee, being sworn, testified:

DIRECT EXAMINATION by MR. STEVENS:

Q. Mr. Taylor, where do you reside? A. Fredonia, N. Y.

Q. Were you at one time postmaster of the village of Fredonia? A. Yes, sir.

Q. When did your term commence? A. November 9th.

Q. What year? A. 1899.

Q. When did it end? A. April 1, 1905.

Q. What year? A. 1904.

Q. Upon whose recommendation were you appointed postmaster? A. I suppose Judge Hooker's.

Q. Have you been a warm personal friend of Judge Hooker's for many years? A. Yes, sir.

Q. Have you been interested with him, actively, in politics? A. Well, I don't know what you call actively, I have been his friend.

Q. Well, you have acted in his behalf and used your influence in his behalf, haven't you, and gone around for him politically? A. Yes, sir.

Q. That is what I wanted to get at? A. Yes.

Q. Now, after you were appointed postmaster in 1899, what was the first appointment to office which you made in that office? A. Appointed a deputy.

Q. Deputy postmaster, or chief clerk, which was it at that time? A. Well, I don't know what it was, I can't state whether it was chief clerk or deputy clerk.

Q. Don't you know it was a chief clerk? A. I know the department at Washington changed them, that is all I know.



Q. Well, was it chief clerk or deputy postmaster? A. I can't say.

Q. You can't say which it was? A. No, sir.

Q. Who was the person whom you appointed? A. Chauncey D. Sessions.

Q. Upon whose request did you appoint Chauncey D. Sessions, as chief clerk? A. My own.

Q. How long had you known Chauncey D. Sessions? A. Well, I think I have always known him ever since—he grew up there in Fredonia, for several years, anyway.

Q. Did anybody ask you to appoint Chauncey D. Sessions, clerk? A. Not that I remember.

Q. Have you a clear recollection on the subject? A. Why, I think so.

Q. Well, is Chauncey D. Sessions any relation, by marriage or otherwise to Judge Hooker? A. He would be his nephew.

Q. What is it? A. He is his wife's sister's son.

Q. Then he is a nephew of Judge Hooker's wife? A. Yes, sir; that is it.

Q. Now what was the next appointment that you requested to be made in that office? A. Well, I don't know, let's see, probably, I guess it was Maurice Hooker.

Q. Do you know a young lady named Katherine K. Clark? A. Oh, yes, that is so, excuse me.

Q. You did request her appointment, did you? A. Yes, sir.

Q. To whom did you go to have her appointed? A. Well, probably I asked Judge Hooker to help me get her appointed.

Q. Well, you say probably, have you any clear recollection on the subject? A. I couldn't say clear, I think so.

Q. Do you recollect having a talk with Judge Hooker on the subject of an appointment in your office? A. I can't say that I did, I can't remember it.

Q. You can't remember? A. No, sir.

Q. You know that he did write to the department about it, don't you—Beavers? A. Well, I can't remember that, either.

Q. Have you read the evidence that was taken before the Bar Association Committee? A. No, sir, I haven't read it.

Q. Haven't read any of it? A. Oh, I have looked at some of it, but a little of it.

Q. Well, have you read the correspondence that Judge Hooker had with Beavers with reference to Miss Clark's appointment? A. Yes, I think, I have.

Q. Do you know how Judge Hooker became interested in her appointment? A. Well, I might have asked him to help me get her appointed.

Q. Well, now did you ask him to help you get her appointed? A. Well, probably I did.

Q. Do you think that you did? A. Yes, I think I did.

Q. Where was it? A. Well, sir, that I couldn't tell.

Q. Was it in the village of Fredonia? A. I think so.

Q. At the postoffice? A. No, sir.

Q. In his office? A. No, sir, I don't think so.

Q. At his house? A. Well, I can't tell just where this was.

Q. What reason did you assign to Judge Hooker for wanting her appointed? A. Simply because I wanted to get a good money order clerk there.

Q. Did you tell him who was at work in that office? A. I did not.

Q. You did not? A. No, sir.

Q. Did he ask as to the necessity for her appointment? A. No, sir.

Q. He didn't ask whether it was necessary or not? A. I think not.

Q. Did he ask who else was in the office? A. I think not.

Q. Did he ask who was in the office that was performing the duties of money order clerk at that time? A. No, sir.

Q. Did he ask what Mr. Ball was doing? A. No, sir.

Q. Nothing about it? A. No, sir.

Q. You simply told him you wanted Katherine Clark appointed and that was all there was of it? A. I think so.

Q. Did you have any talk with him as to her going to some other office first? A. Not that I know of.

Q. Was there any talk between you and Justice Hooker about her being appointed to some other office than Fredonia before she received her Fredonia appointment? A. Well, I can't say whether there was or not.

Q. Have you any recollection? A. No, I haven't.

Q. Have you any recollection at all of any conversation with Justice Hooker on the subject? A. Well, I can't recall it.

Q. Can you recall in any way how Miss Clark came to be appointed to the office? A. Why, probably I asked to get her.

Q. I am not asking "probably," Mr. Taylor, I am asking what you recall now; we can guess at probabilities? A. Well, I think I asked him to help me get her appointed.

Q. Well, can you tell us the whole conversation? A. Well, now I can't; I can't remember it.

Q. Why not? A. Because I can't remember it, Mr. Stevens.

Q. Have you been thinking diligently on the subject for the past year? A. No, sir, I have not.

Q. Haven't thought of it at all; has your attention been called to it before this time? A. I have read about it.

Q. Did you know that Miss Clark was appointed to the Fort Plain office? A. I heard she was, yes, sir.

Q. Who told you so? A. Well, sir, that I can't tell.

Q. Did Miss Clark tell you? A. I don't know.

Q. Have you any idea who told you? A. No, sir, I can't remember.

Q. Did Justice Hooker tell you she was appointed? A. Well, sir, I can't remember.

Q. Have you any recollection on the subject? A. No.

Q. Now you did know that she was appointed to that Fort Plain office before she was appointed to the Fredonia office? A. Yes, sir.

Q. Do you know when she was appointed to the Fort Plain office? A. I can't remember, I guess probably it was in December.

Q. What year? A. Well, that would be 1900, wouldn't it?

Q. I don't know, it is for you to say? A. I know that.

MR. FISH: When did he take the office?

MR. STEVENS: He took the office in November, 1899; the papers show that she was appointed December 15, 1899, at the Fort Plain office.

THE WITNESS Well, that probably is—I was thinking about the month, I wasn't thinking about December.

Q. Why were you willing to wait three months or four months for a money order clerk? A. Couldn't get one any quicker.

Q. You couldn't? A. No.

Q. Was it impossible to get a money order clerk appointed in less than three months? A. Yes, sir.

Q. For what reason? A. I can't tell you.

Q. Well, then why do you say you couldn't get one appointed any quicker? A. Well, we had no civil service board there.

Q. Do you mean to say that it was an absolute impossibility to get a clerk appointed to the Fredonia postoffice, directly without having them appointed to some other place first? A. Well, I don't just get at what you mean.

Q. I mean to ask you, Mr. Taylor, if you needed——

By MR. FISH (interrupting):

Q. Was there any other way to get a clerk appointed than that was done? A. I don't know of any other way.

By MR. STEVENS:

Q. You didn't know of any other way? A. No, sir.

Q. To get any person appointed? A. No, sir.

Q. Now when did you first learn that Mr. Ball was on the payroll of the Fredonia postoffice? A. Never knew it; the first I knew it was when I went in there.

Q. When you went into the postoffice? A. Yes, sir.

Q. You found him on the roll, did you? A. Yes, sir.

Q. Did you find him doing any duties? A. No, sir.

Q. Performing any services? A. No, sir.

Q. Reporting at the office at any time for service? A. Well, I don't know but he may have.

Q. Well, did he? A. I don't know that he did, I can't remember.

Q. Can you remember of his performing any services whatsoever? A. Never, no, sir.

Q. There was no day when he was there all day or reported for service, even? A. No, sir.

Q. Now, I show you Exhibit No. 6, of March 21, in this proceeding, which purports to be a copy of a letter from you to the First Assistant Postmaster-General; I wish you would look it over (handing paper to witness); did you send such a letter as that? A. Well, sir, probably I did, I can't—

Q. Well, you think you did? A. I may have done it, yes, sir.

Q. Did you send a report of the clerk's time with it, as the letter says you did? A. Probably.

Q. Now I show you Exhibit No. 7, of March 21, in this proceeding, and I ask you if Frank P. Ball's time is reported there? A. Well, now I don't—

Q. Is it? A. Yes, it is there.

Q. It gives the hour in the morning and the hour in the afternoon when he came to work and likewise the hour in the morning and the afternoon when he quit work each day for a week? A. There was such a paper.

Q. That is on that paper? A. Yes, sir.

Q. You made that paper up, didn't you? A. No, sir.

Q. Who did? A. Well, some of the clerks, I don't know who. I couldn't state who did make it up.

Q. You signed it? A. I did.

Q. With your approval? A. Well, I didn't know just what was in it, Mr. Stevens, I never looked it over to see just what it was. I think I have some of these same things—

Q. Wait a minute, now which clerk made it up? A. Well, sir, I don't know.

Q. Did Chauncey D. Sessions make it up? A. Well, he may have made it up. Probably him and I talked it over and made it up, I don't know.

Q. Can you tell why Frank P. Ball's name is in there? A. No, sir, I can't.

Q. Who made up his list of time? A. Well, that I can't say.

Q. He wasn't there as that report shows, was he? A. No, sir.

Q. So that the report is absolutely false and was at the time it was made, wasn't it? A. It looks kinder that way.

Q. Well, was it, or wasn't it? A. Well, I would like to explain a little.

Q. Now, was that report false at the time it was made, and known to you?

MR. HURD: That question was not answered.

Q. Now, Mr. Taylor, why did you send that false report to the department?

MR. CARR: Now, Mr. President, I raise an objection to a question of that kind here.

MR. COMAN: It is not answered.

Q. Why did you send that report concerning Ball to the department?

MR. CARR: I now make the same objection to that, Mr. President, on the ground that there is nothing contained in the specifications or charges of any connivance or agreement between Judge Hooker and Melvin H. Taylor with regard to the appointment of Frank P. Ball or his being carried on the rolls of the office. There is a charge that he did connive and agree with George W. Beavers to secure his appointment as laborer and clerk, but there is no allegation anywhere that he connived or agreed with Melvin H. Taylor in the slightest degree with reference to his appointment or with reference to his retention in the service.

THE PRESIDENT: Objection overruled.

A. This is one of the many letters that we received from the department, a circular letter, and this probably was made up; I can't remember anything about it; and all papers that are made up, my business, I sign them, and I signed that without looking at it or giving it any thought whatever. I didn't sign it—

Q. Why did any clerk put in Ball's time there in absolute detail when he was not there in the office at all? A. That I can't answer.

Q. Why did you sign a report of that character without looking at it? A. That I can't answer; I signed it, I am certain I didn't look it over.

Q. I now show you, Mr. Taylor, Exhibit No. 8, which purports to be a copy of a letter from you to the First Assistant Postmaster-General; I wish you would look it over and tell me whether you sent such a letter or not?

THE WITNESS: Well, sir, I don't remember of ever signing that; probably I did, but I can't remember anything about it, not a single thing.

Q. That says, did you not, "Inclosed herewith I hand you a schedule of daily time of the clerks in this office for the week ending November 15, 1902." Now I show you the schedule, Exhibit No. 9, and ask you if you sent a schedule, of which that is a copy?

THE WITNESS: I don't know anything more about this than I do about the other; I don't know that I ever looked—I am certain that I never looked that over.

Q. Can you tell me who made up that schedule? A. No, sir, I cannot.

Q. Who were the clerks in your office at that time? A. Well, here they all are (referring to schedule).

Q. Well, just tell us so we may know.

THE WITNESS: Well, Miss Clark was there; Katherine K. Clark, Ora E. Caldwell, Edwin W. Easton, Charles H. Landers and Chauncey D. Sessions.

Q. Well, now it was either made up by one of those persons or yourself, was it not? A. I presume, yes, sir, it probably was.

Q. Have you any idea that it was made up by Charles H. Landers? A. I say, I can't say, I can't state that.

Q. Have you any idea that it was made up by Mr. Easton? A. I can't state it.

Q. Do you think it was made up by Miss Clark?

THE WITNESS: I don't know.

Q. Do you know of any reason for putting in a report that Ball was there when he was not there? A. No, sir, I do not.

Q. Do you know of any reason why one of the clerks in the office should make a detailed report of Ball's time, when he was not there at all? A. I do not.

Q. Was there any reason for doing it? A. Not that I know of.

Q. Have you any reason to give why it was done? A. I haven't.

Q. Have you any explanation whatsoever that you wish to offer on that subject? A. Well, I don't just know, what is that?

Q. Have you any explanation that you wish to offer why these two reports went into the postoffice department at Washington in the way they did? A. I don't know how they got there; as I said, I think there has been those kind of reports they sent out, and it is for the purpose of getting the offices under the eight hour system, as I understand it, and if those came to my office they were filled out; I don't remember anything about it; I signed it but that is all I remember about it.

Q. Was there any reason why a statement regarding Mr. Ball's time should be manufactured which was not true? A. I can't answer, I don't know anything about it.

Q. Was there any clerk in the office that had any interest in making any such statement that was false? A. I don't know.

Q. Do you wish to offer any more explanation on that subject? A. No, sir.

Q. Now you have said, Mr. Taylor, that you wanted Miss Clark appointed because you wanted a good money order clerk? A. Yes.

Q. Mr. Ball is a capable man, is he not? A. I suppose so.

Q. Do you know? A. I think he is capable.

Q. He has worked in a bank for years, hasn't he? A. I believe so.



Q. As bookkeeper? A. I don't know what his position was.

Q. Well, you knew that he worked in the Fredonia National Bank, didn't you? A. Well, sir, I didn't know what position he held.

Q. Well, you knew that he had worked in the bank? A. Yes, sir, I have seen him there.

Q. And you knew that he was familiar with clerical work, did you not? A. No, sir, I didn't know it.

Q. You had known him a great many years, hadn't you? A. Yes.

Q. Why didn't you ask to have him act as money order clerk? A. I can't tell you.

Q. When did you first speak to Mr. Ball on the subject of his employment in the office? A. I don't know, I can't say.

Q. Did you ever speak to him on the subject? A. I don't know that I ever did.

Q. Have you any recollection of ever doing so? A. No, sir.

Q. You gave him the checks from time to time, did you not? A. Yes, sir.

Q. Did you hand them to him personally? A. Sometimes I did and sometimes he got them of the clerk.

Q. What clerk? A. My deputy.

Q. Chauncey D. Sessions? A. Yes.

Q. Did he sign the pay rolls? A. I presume so.

Q. Do you know anything about it? A. I don't think he ever signed them; I don't think I ever see him sign them.

Q. Did you see the pay rolls when they were signed by him? A. I have seen them, yes, sir, not when he signed it though, as I remember it.

Q. Don't you remember when they were signed they were signed without the amount being carried out? A. No, sir.

Q. You say that it wasn't so? A. I don't say, I don't know.

Q. You won't say one way or the other on that question? A. I don't know.

Q. Why didn't you ask Mr. Ball to go to work in the office? A. I can't tell you.

Q. Was there any reason that you didn't? A. No, sir.

Q. Why didn't you report to the department that he was not performing any service? A. Well, that I can't answer.

Q. Was there any reason that you didn't? A. I paid him simply the same way that I found him on the pay rolls when I went there and I supposed he was appointed regularly by the department and I continued it right along.

Q. And you thought that it was all right? A. I did, yes, sir; I supposed it was all right.

Q. Now, thinking it was all right, does that refresh your recollection as to these two reports that I have been calling your attention to, why they were made? A. I don't know why they were made.

Q. If you thought that his employment was all right why were those two reports sent in as they were? A. I can't say.

Q. Now, after Miss Clark had been appointed to Fort Plain did you speak to Justice Hooker on the subject, about her coming to Fredonia? A. I presume I did.

Q. Where? A. I can't state where, sir.

Q. Was it in the postoffice? A. Not in the postoffice, no, sir.

Q. Was it his office? A. I can't state where.

Q. Did you talk with him about postoffice matters at that time any? A. Not much.

Q. Did you? A. I can't say that I did.

Q. Did you ask him to order any supplies from Washington for you? A. I might have asked him, yes, sir. ●

Q. Why did you do that? A. Well, sir, I can't tell why I done it.

Q. Did you at the same time that you were asking that Miss Clark be appointed ask him to get new supplies from Washington? A. I think at one time, I did; I want some.

Q. Well, you have seen these letters that have been put in evidence, haven't you? A. I believe so.

Q. Now I show you, Mr. Taylor, a letter from Judge Hooker to George W. Beavers, dated April 12, 1900; I wish you would look at the postscript of that letter. (Page 250, printed record of

State Bar Proceedings.) Have you read the letter through now as printed? A. Yes.

Q. You see that refers to the appointment of Miss Clark in the Fredonia postoffice, do you not? A. Yes, sir.

Q. Transferred from Fort Plain? A. Yes, sir.

Q. Now the postscript reads "I would like to have you procure for the postoffice at Fredonia four paper and package boxes and six small letter boxes? A. I asked for that.

Q. You asked him for that? A. I did.

Q. That letter refreshes your recollection, does it? A. About that, yes, sir.

Q. You recollect now the conversation with Judge Hooker after looking at that letter? A. I hadn't any conversation with him, only that.

Q. Only what? A. Why that I asked him to get that. Yes, I asked him if Miss Clark, I didn't know but what she might have some money there; I asked him if she did to have it sent there to Fredonia.

Q. You asked him, you asked Judge Hooker, do you mean? A. Yes, sir.

Q. You knew that Miss Clark had not been to Fort Plain, didn't you? A. I did.

Q. And you were talking with Judge Hooker about having money sent her? A. No, I didn't.

Q. Did you ask him that? A. Well, I don't know what the words I used, I can't say.

Q. Did Judge Hooker know that Miss Clark hadn't been to Fort Plain? A. No, sir, not that I know of.

Q. Did you tell him? A. No, sir.

Q. Why did you ask him then to have the money sent to Miss Clark if she had some coming to her? A. I can't answer that.

Q. Why were you asking Judge Hooker to write the Department for small supplies at your office? A. Well, I can't state that.

Q. Is there anything that you can state about it, Mr. Taylor? A. No, sir.

Q. Have you the slightest recollection of the conversation? A. No, sir.

Q. You knew when Judge Hooker resigned from Congress, did you not? A. I knew it, yes.

Q. You knew that when this letter was written April 12, 1900, that he was not a member of Congress, didn't you? A. I don't know, I can't remember any such thing.

Q. When did he resign from Congress? A. I don't know.

Q. Well, you knew at the time when he did resign, didn't you? A. I knew he resigned, but I can't state the date now.

Q. And you knew at the time when he was appointed Justice of the Supreme Court, didn't you? A. I couldn't state the time.

By MR. FISH:

Q. You knew the fact? A. I knew the fact he had been appointed.

By MR. STEVENS:

Q. At the time? A. I don't know whether it was at the time, I can't—

Q. Well, within a day or two or two or three days? A. Oh, probably.

Q. That is as near as you can come to it is "probably"? A. Yes, sir.

Q. And you were postmaster in Fredonia at the time. Now, Mr. Taylor, do you recollect Maurice Hooker being appointed laborer in your office? A. Yes, sir.

Q. Do you recollect having a conversation with anybody on that subject? A. Not without it was I asked for his appointment, and I think I asked Judge Hooker to help me.

Q. You went to Judge Hooker and asked his appointment, did you? ●

MR. HOYT: He didn't say that.

Q. I asked if he did? A. No, sir, I didn't.

Q. Well, now tell us just what was said? A. Well, I started to and you shut me off.

Q. Well, go on and tell it then (Stenographer reads question)?  
A. No, I didn't. I think I had a letter; I wrote a letter myself and I asked him if he would help me to get him appointed, that is all.

Q. Where did you ask Judge Hooker that, where were you? A. Well, I can't just state.

Q. Did you go to Judge Hooker's house?

THE WITNESS: To assist me and to get him appointed.

Q. Did you talk with Judge Hooker on the subject? A. No, sir.

Q. Or did you write a letter to Judge Hooker? A. I have told you all there was of it.

Q. Well, the chairman of the committee doesn't understand it just as I did, did you?

MR. FISH: I understood it that he said he wrote a letter to Judge Hooker asking—

THE WITNESS (interrupting): No, not at all, oh, no. I wrote a letter to the department myself asking for the appointment of a laborer and I think I asked Judge Hooker to assist me.

Q. The letter that you wrote asking for Maurice Hooker's appointment was not written to Judge Hooker? A. No, sir.

Q. And whatever took place between you and Judge Hooker did not take place by letter between you? A. Oh, no, sir, not at all.

Q. Then you had a conversation with Judge Hooker on the subject? A. That is all I asked, just asked him to help me as I have stated.

Q. This letter that you wrote to the department, did you mail it yourself? A. I think I did, yes, sir.

Q. Where? A. In the postoffice.

Q. Did you mail any other letter at the same time? A. I think so.

Q. What? A. Why, I think that there was a letter from him in the same letter.

Q. Well, now where was the conversation between you and Judge Hooker had? A. It was some place in the building, probably in his office.

Q. Was Maurice Hooker present? A. I think not.

Q. Were you ever in Judge Hooker's office when Maurice Hooker was present? A. I can't state; I don't remember.

Q. You wanted a laborer appointed in the postoffice, is that the idea? A. Yes.

Q. What duties were there for a laborer to perform in the postoffice? A. Scrubbing and cleaning and that is the——

Q. The lobby in the postoffice was taken care of by the janitor? A. The outside of it, yes, sir.

Q. So that the scrubbing and cleaning was simply inside the office? A. Well, there was the inside the office, the stairs that they go down that they fetch all the mail up, twenty odd mails a day goes down and up and the toilet room.

Q. How large a room was this that had to be mopped out? A. Oh, I don't know the dimensions of it.

Q. Oh, approximately? A. Well, I can't state. It is large enough to do the business in; she cleaned that and cleaned my private office, wiped the woodwork.

Q. Who did? A. Never mind.

Q. Who cleaned it? A. Why the one that cleaned it.

Q. Well, who did? A. Why the women I hired.

Q. What was her name? A. I can't tell you the name.

Q. Did you hire more than one? A. I had two or three different ones, not regularly employed or anything: you mean previous to my regular——

Q. (interrupting) Yes, previous, A. I had several different ones.

Q. How many. A. Well, sir, I can't say.

Q. Being employed at the same time or different times? A. Oh, different times.

Q. You had only one at a time? A. Yes, sir.

Q. One at a time, but you mean different ones in succession? A. Yes, sir. ●

Q. But only one at a time? A. Yes, sir, that is all.

Q. Can you give the name of any one of them? A. No, sir, I cannot; they were Polanders.

Q. The clerks did the sweeping out? A. In the morning.

Q. How did you pay those persons that you employed to do the mopping? A. Paid them in cash.

Q. By authority of the department? A. Yes, sir.

Q. And got an allowance from the department? A. Yes, sir.

Q. Can you tell how much you payed a quarter? A. No, I cannot. When I first went into the postoffice it was very little.

Q. Was that in the old building or the new? A. It was in the new building.

MR. COMAN: This is the Fredonia postoffice, not the Dunkirk postoffice.

MR. CUNNINGHAM: Oh, yes, that is so.

Q. Can you tell how much you paid just before Maurice Hooker was employed? A. Well, I don't know whether it was from \$8 to \$12 per month.

Q. How much? A. I don't know just what it was.

Q. Well, give us your idea. A. Well, I think I was having it done twice a day—twice a week I mean.

Q. Have you any idea how much you payed a month, or a quarter? A. Previous to his appointment?

Q. Yes, I am asking about previous to his appointment. A. I say before he was appointed it was a small amount.

Q. A small amount is indefinite; give us the amount. A. It wasn't more than \$4 or \$5 or \$6 a quarter. I don't know just what it was. May be it was a month, I have forgotten.

Q. Well, which will you have it, a quarter or a month? A. Well, I can't state. It is so long ago I have forgotten.

Q. (presenting paper) I show you a paper dated December 30, 1899, and ask you if that is an original paper that you received from the department at Washington? A. That is all right.

Q. Is that an original paper that you received from the department at Washington? A. Well, they generally are—

Q. (interrupting) Why, can't you tell by looking at it? A. Well, I was looking right here. I should say it was the postmaster at Fredonia, N. Y. It don't show it.

Q. It shows down there (indicating)? A. Yes, I guess this is an original allowance that they gave me.

Q. It says in there "cleaning, \$3," doesn't it, for the quarter?  
A. Yes.

MR. HURD: Paper offered in evidence, received and marked Exhibit 162.

Exhibit 162 is as follows:

	Post Office Department,
In your reply please refer	office of the
to initials and date.	First Assistant Postmaster-General,
A. W.	Salary and Allowance Division.

WASHINGTON, D. C., December 30, 1899.

Subject: Allowance.

Sir:

You are authorized to make the following expenditure for your office. Submit proper vouchers therefor with your quarterly returns to the Auditor for the Postoffice Department, and enter on the face of each voucher "Authorized by First Assistant Postmaster-General, A. and A. Div.," with *initials* and *date* of this letter.

Very respectfully,

PERRY S. HEATH,  
*First Assistant Postmaster-General.*

The Postmaster,  
Fredonia, N. Y.

G. W. B.

Cleaning . . . . .	\$3.00
Miscellaneous items for the quarter ending March 31, 1900. . . . .	2.90
as per your request of the 28th instant.	

Total . . . . .	\$5.90
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Q. (presenting same) Look over that paper. Is the paper which I show you the original bill for the cleaning of that post-office for the quarter ending March 31, 1900? A. That is for keeping it dirty; that wouldn't clean it, or didn't begin to.

Q. Is that the bill for that cleaning? A. Yes, sir.



Q. Whose handwriting is that made out in? A. I don't know. It is not mine.

Q. It is made to Aggie Torsky, is it not? A. Yes, sir.

Q. And is receipted by her? A. Yes, sir, it appears so.

MR. HURD: Paper offered in evidence, received and marked 163.

Exhibit 163 is as follows:

“(Form 1526)

Postoffice, Fredonia, State of New York.

To Aggie Torsky, Dr.

Scrubbing postoffice floor, Jan. 1 to Mar. 31..... \$3.00

Authorized by First Assistant P. M. G., S. and A. Division,  
A. W., Dec. 30, 1899.

Received of M. H. Taylor, P. M., at Fredonia, State of New York,  
the above sum of three dollars (\$3.00), for which I have signed  
duplicate receipts this 30th day of March, 1900.

AGGIE (X) TORSKY.

Her mark.

Witness:

C. H. Landers.

C. E. Cadwell.”

MR. STANDART: Whose handwriting is that, Mr. Stevens?

MR. STEVENS: I don't know. He says he don't know.

THE WITNESS: No, sir; I don't know. The two witnesses  
there were a couple of my clerks.

Q. Well, it must have been your handwriting, or Mr. Sessions,  
the chief clerk? A. It may have been his handwriting.

Q. Don't you know his handwriting? A. I can't always tell  
it, no, sir. It may have been. It is not mine. •

By MR. CAHN:

Q. To the best of your knowledge, is that Mr. Sessions' hand-  
writing? A. To the best of my knowledge it might be.

Q. No, not it might be; answer the question. To the best of your knowledge is that his handwriting? A. Yes.

Q. (presenting same) I show you another paper and ask you to look at it. I ask you if that is the original receipted bill for the amount paid for labor and services for the quarter ending June 30, 1900? A. I presume it is.

I offer that in evidence.

Received and marked "Ex. 164."

MR. COMAN: I suggest that these exhibits in all being similar in form that it is not necessary to read them in full. There are quite a number of them.

MR. CARR: We assent to that.

MR. COMAN: And the simple statement that it is a receipt for \$3.00 covering a certain period is sufficient.

MR. CARR: They will be printed?

MR. COMAN: O yes, they will be printed.

(Form 1526 P)

Postoffice at Fredonia, State of New York.

To Aggie Torsky, Dr.

Date of purchase.	Articles purchased, or services performed.	Amount.
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To

At

Cleaning postoffice, April 1 to June 30, both dates inclusive. \$3.00

Authorized by First Assistant P. M. Gen., S. and D. Division,  
May 12, 1900. "A. and W."

Received June 30, 1900, of Melvin H. Taylor, P. M., payment  
in full. (Sign here in ink.)

AGGIE (X) TORSKY.

Witness:

W. E. Easton.

C. H. Landers.

### Instructions.

When possible, send original vouchers on printed billhead of dealer furnishing the articles; when such bills cannot be obtained, use this form. In all cases give dates of each purchase, price and amount.

When this form is used for rent, or for services performed, always enter the dates "from and to, inclusive." If lease of premises include light and fuel, vouchers should read, "rent, light and fuel per lease."

Take duplicate receipts and keep on file in your office.

MR. COMAN: The question is repeated on page 829.

Q. That is all you paid for janitor for that quarter, was it not?

A. That is all the paper states.

Q. Do you recollect paying anything more? A. No, I do not.

Q. This (exhibit 164) is also receipted by Aggie Torsky; that is the same person as the other? A. Yes, sir. Her mark is there.

Q. I show you a paper dated July 19, 1900, and ask you if that was a paper received by you from the postoffice for that quarter?

MR. HURD: Resumed reading the testimony.

(Question repeated as follows) I show you a paper, dated July 19, 1900, and ask you if that was a paper received by you from the postoffice department authorizing the amount you were to pay for cleaning for that quarter? A. I presume it is so.

I now offer it in evidence.

Received and marked "Ex. 165," and the following is a copy of the same:

FORM A. 51.

In your reply

please refer

to initials and

date. G. W.

Post Office Department,

Office of the

First Assistant Postmaster General,

Washington, D. C. July 19, 1900.

SUBJECT: ALLOWANCE.

Sir: You are authorized to make the following expenditure for your office. Submit proper vouchers therefor with your quarterly

returns to the Auditor for the Post Office Department, and enter on the face of each voucher "Authorized by First Assistant P. M. G. S. and A. Div.," with *initials* and *date* of this letter.

Very respectfully,

G. W. BEAVERS,

Acting Assistant Postmaster General.

The Postmaster,

Fredonia, N. Y.

Cleaning .....	\$3.00
Brooms and soap .....	2.00
Total .....	<u>\$5.00</u>

For the quarter ending September 30, 1900.

You will confer with the lessor of the building, relative to a water cooler in the sum of \$3, as the lease for postoffice premises includes all fixtures, furniture and additions thereto.

THE WITNESS: It is so long ago I have forgotten it, but I presume it is all right.

Q. You know Mr. Beavers' handwriting, don't you? A. No, I do not.

Q. You know the general appearance of the documents that you received in the postoffice at Fredonia, don't you? A. He didn't sign all of them.

Q. You are personally acquainted with Mr. Beavers, are you not? A. I am not. I never seen him in my life, no, sir.

Q. (presenting same.) I show you another paper and ask you if that is the original bill for the cleaning for the quarter ending September 30, 1900? A. I presume that is right.

Q. This Aggie Torsky is the same person as in the others? A. Yes, sir.

I offer the same in evidence.

Received and marked "Ex. 166, April 5, 1905," and the following is a copy of the same.

*"Form 1526 P.*

Post Office at Fredonia, State of New York.  
 To Aggie Torsky, Dr.  
 Date of Articles Purchased, or services  
 Purchase Performed Amount.  
 To cleaning postoffice from July 1 to September 30, both  
 inclusive ..... \$3.00  
 "Authorized by First Asst. P. M. G. S. & A. Div., July 19, 1900,  
 A. & W.  
 Received Sept. 30, 1900, of Melvin H. Taylor, P. M., payment  
 in full, (Sign here in ink)  
 AGGIE (X) TORSKY.  
 C. H. Landers,  
 E. W. Easton.

## INSTRUCTIONS.

When possible send original vouchers on printed billhead of dealer furnishing the articles; when such bills cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price and amount.

When this form is used for rent, or for services performed, always enter the dates 'from and to inclusive.' If lease of premises include light and fuel, vouchers should read 'rent, light and fuel per lease.'

Take duplicate receipts and keep one file in your office."

Q. (presenting same.) I show you another paper dated October.

Q. Well, do you mean by its being all right that that is a paper you received from the department? A. Yes, sir.

I offer that in evidence.

Received and marked "Ex. 167," and the following is a copy of the same:

JULY 12.]

405

*Form A. 51.*

Post office Department,

First Assistant Postmaster General, Office of Superintendent.

Division of Salaries and Allowances.

In your reply

please refer

to initials and date Division of Salaries and Allowances,

A. W. Washington, D. C., October 15, 1900.

Postmaster,

Fredonia, N. Y.

Sir: You are authorized to make the following expenditures for your office. Submit proper vouchers therefor with your quarterly return to the Auditor for the Post Office Department, and enter on the face of each voucher "Authorized by First Assistant P. M. G., S. & A. Div." with *initials* (G. W. B.) and *date* of this letter. Cleaning for quarter ending Dec. 31, 1900..... \$5.00

It is noted in your request of the 6th instant that you state the cleaning is for the quarter ended Sept. 30; but as an allowance of \$3 was made for cleaning at your office for the quarter ended Sept. 30, it is assumed that your request is intended for the current quarter.

Very respectfully,

G. W. BEAVERS,

Acting First Assistant Postmaster General.

5-4252

Q. (presenting same) I show you another paper and ask you if that is the original receipted bill for cleaning for the quarter ending December 31, 1901? A. I think it is.

Q. Signed by whom? A. Aggie Torsky.

Q. That is the same person, is it? A. Yes.

Q. That signed the others? A. Yes.

I offer it in evidence.

Received and marked "Ex. 168," and the following is a copy of the same:

## "Form 1526 P.

Post Office at Fredonia,

State of New York.

To Aggie Torsky,

Dr.

Date of Purchase	Articles Purchased, or Services Performed.	Amount
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To cleaning postoffice from Oct. 1, 1900, to Dec. 31, 1900, both dates inclusive, \$3.

Authorized by First Ass't P. M. Gen., S. & A. Division 'G. W. B.,' Oct. 15th."

Received Dec. 29, 1900, of Melvin H. Taylor, P. M.

Payment in full

Witness:

(Sign here)

her

Katherine H. Clark

in ink

Aggie (X) Torsky

C. D. Sessions

mark

## Instructions.

When possible send original vouchers on printed billhead of dealer furnishing the articles; when such bills cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price, and amount.

When this form is used for rent, or for services performed, always enter the dates "from and to inclusive." If lease of premises include light and fuel, vouchers should read "rent, light and fuel per lease." Take duplicate receipts and keep one on file in your office.

Q. (presenting same) I show you a paper dated February 12, 1901, and ask you if that is the authorization received by you from the postoffice department for cleaning for that quarter, ending March 31, 1901? A. Yes, sir.

I offer it in evidence.

Received and marked "Ex 169," and the following is a copy of the same:

**JULY 12.]**

**407**

**From A 51.**

**Post Office Department,  
First Assistant Postmaster-General.**

**In your reply please refer  
to initials and date.**

**A. W.**

**Office of Superintendent,  
Division of Salaries and Allowances.**

**Washington, D. C., February 12, 1901.**

**Postmaster,**

**Fredonia, N. Y.**

**Sir: You are authorized to make the following expenditures for your office. Submit proper vouchers therefor with your quarterly returns to the Auditor of the Post Office Department, and enter on the face of each voucher "Authorized by First Ass't P. M. G., S. & A. Div.," with initials ("G. W. B."), and date of this letter.**

**Miscellaneous items, as per your request of the 8th instant \$4.50. Cleaning as per your request of the 8th instant, \$3. Said items are for current quarter.**

**Very respectfully,**

**W. M. JOHNSON,**

**G. W. B.**

**First Assistant Postmaster-General.**

**5-4252**

**Q. (presenting same) I show you another paper and ask you if that is the original receipt for the moneys paid by you for cleaning for the quarter ending March 31, 1901? A. It is a receipt for that.**

**Q. It is the receipt for what you paid? A. Yes, sir.**

**Q. That is for how much? A. Three dollars.**

**Q. And signed by whom? A. Aggie Torsky.**

**Q. The same person? A. Yes.**

**I offer that in evidence.**

**Received and marked "Ex. 170," and the following is a copy of the same:**



## Form 1,526 P.

Post Office at Fredonia,

State of New York.

To Aggie Torsky,

Dr.

Date of                      Articles Purchased, or Services  
 Purchase                      Performed                      Amount  
 To Cleaning Post Office from Jan. 1st, to Mar. 31st, both dates  
 inclusive, \$3.

"Authorized by First Ass't. P. M. G., S. & A. Div. G. W. B.,  
 Feb. 12, 1901."

Received March 31, 1901, of Melvin H. Taylor, P. M.

Payment in full

her

Witness:

(Sign here)

Aggie (X) Torsky

Katherine K. Clark, in ink

mark

O. E. Cadwell.

## INSTRUCTIONS

When possible send original vouchers on printed bill-head of dealer furnishing the articles; when such bills cannot be obtained use this form. In all cases give dates of each purchase, quantity, price and amount. When this form is used for rent, or for services performed, always enter the dates "from and to inclusive." If lease of premises include light and fuel, vouchers should read "rent, light and fuel per lease."

Take duplicate receipts and keep one on file in office.

Q. (presenting same) I show you a paper dated May 18, 1901, and ask you if that is the authorization received by you from the postoffice department for the payment for cleaning for the quarter, ending June 30, 1901? A. I think that is right.

Q. Well, it is, is it not? A. Why, certainly. There is one little thing there at the bottom I saw. Yes. I was looking at that there (indicating).

I offer that in evidence.

Received and marked "Ex. 171," and the following is a copy of the same:

JULY 12.]

409

Form A 51.

Post Office Department,  
First Assistant Postmaster-General,  
Office of Superintendent,  
Division of Salaries and Allowances.

In your reply please refer  
to initials and date.

Postmaster,  
Fredonia, N. Y.

Washington, D. C., May 18, 1901.

Sir: You are authorized to make the following expenditures for your office. Submit proper vouchers therefor with your quarterly returns to the Auditor for the Post Office Department, and enter on the face of each voucher "Authorized by First Ass't P. M. G., S. & A. Div.," with initials (G. W. B.), and date of this letter.

Cleaning, current quarter, as per your request of the 17th instant, brooms, soap, towels, and brush, as per your said request, \$3.50.

Very respectfully,

J. M. MASTON,

G. W. B. Acting First Assistant Postmaster-General.  
Being for \$3.50 for cleaning.

MR. CARR: That is an allowance.

Q. (presenting same) I now show you another paper and ask you if that is the original receipt given for the amount paid by you for cleaning of the postoffice that quarter? A. Yes; that is the same party.

Q. That is for three dollars, is it not? A. Yes, sir.

Q. And signed by Aggie Torsky? A. Yes.

Q. The same party? A. Yes.

MR. STEVENS: I offer that in evidence.

Received and marked "Ex. 172," and the following is a copy of the same.

No. 8.

Form 1526 P.

Postoffice at Fredonia, State of New York.

To Aggie Torsky,

Dr.

Date of            Articles purchased, or services  
purchase.                            performed.                            Amount.

To cleaning postoffice from April 1, 1901, to June 30, 1901,  
both dates inclusive ..... \$3.00

Authorized by first Assistant P. M. Gen., S. and D. Div.,  
May 18, 1901.                            "G. W. B."

Received June 30, 1901, of Melvin H. Taylor, P. M., payment in  
full.

her  
(Sign here in ink.)      Aggie (X) Torsky  
mark.

Witness:

C. H. Landers.

C. D. Sessions.

## Instructions.

When possible, send original vouchers on printed billhead of dealer furnishing the articles; when such bill cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price and amount.

When this form is used for rent, or for service performed, always enter the dates "from and to, inclusive." If lease of premises includes light and fuel, vouchers should read, "rent, light and fuel per lease."

Take duplicate receipts and keep one on file in your office.

Q. (presenting same) Now I show you another receipt and ask you if that is not a receipt for an extra dollar, for which you asked allowance, for that quarter? A. No, sir.

Q. Look it over. Do you know Charles Potter? A. I do.

Q. He is a man that cleans carpets? A. Yes, sir.

Q. Was that receipt given by him to you? A. It must have been. That was for taking up carpet.

Q. That receipt will speak for itself. A. Yes; that's right.

Q. That was a receipt that was taken by you for one dollar, was it? A. Yes.

Q. Given by Charles Potter? A. Yes.

Q. And was for cleaning the carpet in your room? A. Yes, sir.

Q. So that this woman didn't mop out your private room at all?  
A. I didn't say she did; she didn't mop it because there was a carpet on the floor. Did I say she mopped it?

I offer that in evidence.

Received and marked "Ex. No. 173," and the following is a copy of the same:

**Form 1526 P.**

Postmaster at Fredonia, State of New York.

To Chas. Potter,

Dr.

Date of	Articles purchased, or services	
purchasae.	performed.	Amount.
June 13—	To cleaning carpet in postmaster's rooms.....	\$1.00

Authorized by First Assistant P. M. Gen., S. and A. Division,  
G. W. B., May 18, 1901.

Received June 13, 1901, of Melvil H. Taylor, P. M., payment.  
(Sign here in ink.)

Chas. Potter.

**Instructions.**

When possible, send original vouchers on printed billhead of dealer furnishing the articles; when such bill cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price and amount.

When this form is used for rent, or for services performed, always enter the dates "from and to, inclusive." If lease of premises includes light and fuel, vouchers should read, "rent, light and fuel per lease."

Take duplicate receipts and keep one on file in your office.

Q. (presenting same) I show you another paper, and ask you if that was the receipt taken by you for the payment made for cleaning in the quarter ending September, 1901? A. Yes.

I offer that in evidence.

Received and marked "Ex. 174, April 5, 1905," and the following is a copy of the same.

## Form 1526 P.

Postoffice at Fredonia, State of New York.

To Aggy Torsky,

Dr.

Date	Articles purchased, or services purchase.	performed.	Amount.
------	--	------------	---------

To cleaning postoffice from July 1 to Sept. 30, inclusive			\$3.00.
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Authorized by First Assistant P. M. G., S. and A. Div., G. W.  
B., Aug. 30, 1901.

Received Sept. 30, 1901, of Melvin H. Taylor, P. M., payment  
in full.

Witness:

her

E. W. Easton. (Sign here in ink.) Aggie (X) Torsky.

C. H. Landers. mark.

## Instructions.

When possible, send original vouchers on printed billhead of dealer, furnishing the articles; when such bills cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price and amount.

When this form is used for rent, or for services performed, always enter the dates "from and to, inclusive." If lease of premises includes light and fuel, vouchers should read, "rent, light and fuel per lease."

Take duplicate receipts and keep one on file in your office.

Q. That is for three dollars? A. Yes.

Q. And signed by Aggie Torsky? A. Yes, sir.

Q. That is the same person? A. Yes, sir.

Q. (presenting same) I show you another paper, and ask you if that is the original receipt taken by you for cleaning for the quarter ending December 31, 1901? A. That is all right.

Q. Well, is it? A. Why, certainly.

Q. The amount is how much? A. Three dollars.

Q. And who is the person? A. Aggie Torsky.

I offer that in evidence.

Received and marked "Ex. 175," and the following is a copy of the same.

## Form 1526 P.

Postoffice at Fredonia, State of New York.

To Aggie Torsky,

Dr.

Date of Articles purchased, or services  
purchase. performed.

Amount.

To cleaning postoffice from Oct. 1, 1901, to Dec. 31, 1901.

both dates inclusive..... \$3.00

"Authorized by First Assistant P. M. G., S. and A. Div., G. W.  
B., Dec. 6, 1901."

Received Dec. 31, 1901, of Melvin H. Taylor, P. M., payment  
in full.

her

(Sign here in ink.) Witness:

Aggie (X) Torsky.

C. H. Landers.

mark.

C. D. Sessions.

## Instructions.

When possible, send original vouchers on printed billhead of dealer furnishing the articles; when such bill cannot be obtained, use this form. In all cases give dates of each purchase, quantity, price and amount.

When this form is used for rent, or for services performed, always enter the dates "from and to, inclusive." If lease of premises includes light and fuel, vouchers should read, "rent, light and fuel per lease."

Take duplicate receipts and keep one on file in your office.

Q. Now, Mr. Maurice Hooker's appointment took effect, or became effective as of January 1, 1902, did it not? A. I think so; I am not certain.

Q. Now, Aggie Torsky was the only person employed by you in cleaning the postoffice up to that time, was she not, and paid? A. I guess probably that was the last of her work in the postoffice.

Q. The last of her work before Maurice Hooker's appointment? A. Well, I think that is the very last she ever done there.

Q. Now, isn't it true that Aggie Torsky continued to do the work after that time? A. No, sir.

Q. Will you swear to that positively? A. Yes, sir.

Q. Who did? A. Another woman.

Q. Well, what was her name? A. Well, I can't recall it; probably I will remember it if you will give me time.

Q. I wish you would think it over carefully and tell me who it was? A. Sarah is her first name, but I will be blamed if I can think of the balance of it.

Q. Can't you think of the last name? A. I can't at present.

Q. Now, Mr. Taylor, did you make a statement before the Bar Association Committee regarding these matters? A. I don't know but I did.

Q. Why, you did, at Fredonia, did you not? A. Yes, sir.

Q. Last July? A. Yes.

Q. Were you asked at that time who the person was that you employed to do this cleaning? A. Probably. Read the question and I can remember it, Mr. Stevens.

Q. I ask you if this took place? "Q. This janitor doesn't give me the name, Mr. Taylor? A. Oh, I had several different ones"? A. Well, I meant previous to Maurice Hooker's appointment.

Q. That is what you meant, you had several different ones? A. Yes, I had a different woman from this one previous to that.

Q. That is what I am asking about, previous to Maurice Hooker's appointment. Keep that in mind so I won't have to repeat it. Were you asked this question: "Name one of them?" A. I will be blamed if I can think, Polacks; I can't tell what their names were; when they done the work I paid them for it; I had to take one one time and another another; It was hard, finally, to get them; I couldn't depend upon anybody; didn't know but what I would have to mop out myself; my clerks are not obliged to mop"—did you make that answer? A. I would like to fix this,—

Q. (interrupting). No, please answer the question. Did you make that answer or not? A. I don't know whether I did or not.

Q. You have no recollection on that subject? A. I could explain that whole question if you would allow me to.

Q. No; did you answer that way? A. I had several people before,—

Q. (Interrupting) Did you say before the committee that it was difficult to get people and you had several one at one time and one at another? A. Probably I did.

Q. As a matter of fact you only had Aggie Torsky, isn't that true? A. Well, I think previous to her coming in there that I had somebody else; I ain't certain about it; I can't tell.

Q. Previous to her coming in there. She commenced the first quarter of 1900, according to these receipts? A. Yes, that is so.

Q. So you were in only a part of a quarter before that time? A. Yes. She left and there was another one.

Q. For the years 1900 and 1901 the only person you had there was Aggie Torsky, wasn't it? A. Well, probably.

Q. When did you first become acquainted with Maurice Hooker? A. The first time I ever saw him probably ten or twelve years ago.

Q. Where did you see him? A. I saw him at his father's, over in Perrysburgh.

Q. How old was he at that time? A. I don't know.

Q. A boy four or five years old? A. I don't know.

Q. A little boy? A. I can't tell you.

Q. That was ten or twelve years ago, and how old is he now? A. I don't know.

Q. When did you next see him? A. I can't tell that; probably I saw him a good many times. He used to come to Fredonia visiting with his father there.

Q. Where would he go visiting? A. He would stop with his uncle.

Q. What uncle? A. Warren Hooker.

Q. Where did you see him, at his uncle's? A. I probably have.

Q. Have you a recollection of ever seeing him once in Fredonia before he was appointed to the postoffice? A. Yes, sir.

Q. Where? A. A great many places; on the street.

Q. On the street? A. Yes, sir.

Q. Was he attending school? A. Yes, sir.



Q. Don't you know that he never commenced to attend school at Fredonia until January, 1902? A. Well, probably; I have forgotten.

Q. Just think of that; do you know of his attending school in Fredonia, a single day before January, 1902? A. I can't say that I do; no, sir.

Q. How far does he live from Fredonia? A. Well, he lived at Hamlet at that time.

Q. How far is that? A. Twelve or fifteen miles; I don't know which.

Q. Do you think a boy under sixteen years old would be seen frequently on the streets of Fredonia fifteen miles from home? A. I don't mean that. I mean when he came there to go to school.

Q. He didn't come there to go to school until after he was appointed to the postoffice, did he? A. I think so. What is that, sir.

(Question repeated.) A. Well, I can't say whether he did or not; I can't say.

Q. This letter was written to the postmaster general in the middle of January, 1902; about the 12th of January, wasn't it? A. Yes, if that is the date that I wrote it why that is the date.

Q. Now Maurice Hooker didn't come to Fredonia to attend school until after that time, did he? A. Well, not that I know of.

Q. So far as you know then, he was not attending school at the time of his appointment? A. It seems to me he was attending school at that time.

Q. Well, which way will you have it? A. Well, I can't say.

Q. How did you come to think of Maurice Hooker as a laborer? A. Well, he was a poor boy and going to school there and I thought I would get him an appointment to help him along.

Q. Out of kindness to him; was that the reason? A. Yes, sir; then I wanted a janitor; I wanted somebody to keep the office clean.

Q. Why did you want a janitor? A. I wanted to keep the office cleaner than it had been kept previously.

Q. Did you ask the department for an additional allowance? A. Did I.

Q. Yes. A. No, I didn't ask for an additional allowance. I asked for his appointment.

Q. That is the only request you made of the department? Did you think it would cost \$400 a year to keep your office clean? A. Did I?

Q. Yes. A. I thought it would keep a janitor busy there.

Q. You thought you could keep a janitor busy? A. Yes, sir.

Q. All the time? A. Yes, sir.

Q. Now, I ask you again; did you think it was worth \$400 a year to keep that office clean?

Question repeated as follows: Now I ask you again; did you think it was worth \$400 a year to keep that office clean? A. Yes, sir.

Q. You had been making requests for the previous two years for an allowance each quarter, had you not? A. Yes.

Q. And every quarter but two that request was allowed, for three dollars, wasn't it? A. They wouldn't allow me any more than that.

Q. Your request was for three dollars, wasn't it, every quarter but two? A. That is what it appears to be.

Q. And one quarter you asked for four dollars, didn't you? A. Yes, sir.

Q. And one quarter you asked for five dollars? A. Certainly.

Q. Now you say they wouldn't allow you any more? Did they ever refuse any request that you made for an allowance? A. Well, I don't know whether they did or not. I can't remember that.

Q. How do you know then that they wouldn't allow you any more if you hadn't made any request that they refused? A. Well, the only thing that I can remember—

Q. (interrupting) No; just please answer that. (Question repeated.) A. I do not know. I don't know.

Q. Now, was the postoffice kept reasonably clean during those two years? A. No, sir.

Q. Why, didn't you ask to have it kept reasonably cleaned? A. I don't know.

Q. If three dollars a quarter wouldn't mop it up sufficiently, why, didn't you ask the department for more money? A. If my memory serves me right I used to hire some other persons and they had cleaned a little more.

Q. Well, your memory is good on that point, I suppose, isn't it? A. Well, I don't know whether it is or not.

Q. Then you thought it needed the constant services of a person there, a janitor, to clean out the postoffice every day, did you? A. I didn't say so.

Q. Well, what do you think about that? A. I knew it needed a good janitor.

Q. Didn't you say you thought it would take all his time, or words to that effect? A. I don't know that I did.

Mr. Stenographer, won't you look back and see what he did say on that point so I won't misquote him.

(The stenographer here referred to the witness's answer, as follows: "I thought it would keep a janitor busy there.")

Q. Did you think it would keep a janitor busy there? A. Well, when I got this janitor appointed I expected him——

Q. (interrupting) Wait a moment, Mr. Taylor; we will get along a great deal better if you will just answer my question. Did you think it would keep a janitor busy there? A. Why, he could be kept busy there working every day if he cleaned out every morning.

Q. By cleaning out every morning? A. Yes, sir.

Q. How long would it take to clean out? A. How long?

Q. Yes; how long a time would it take each morning to clean out? A. Well, I don't know; I never timed anybody that cleaned out.

Q. Well, what is your judgment? A. Well, I can't tell.

Q. After having been postmaster four years can't you tell? A. No, sir.

Q. Now, after Maurice was appointed who did the sweeping out? A. The cleaning?

Q. No, the sweeping out of the rooms? A. I guess the same clerk. The clerks took turns in sweeping.

Q. Before Maurice was appointed, during the two years you had been postmaster, the clerks swept out, did they not? A. Yes, sir.

Q. And after his appointment they continued to sweep out then as they had before? A. No; they didn't do so much sweeping.

Q. Well, they continued to do some sweeping? A. Yes, sir.

Q. The same clerks? A. Yes, sir.

Q. Now, did Maurice ever appear to do any work there at all? A. No, sir; he didn't.

Q. He never swept out once, did he? A. No, sir.

Q. He never cleaned out once? A. No, sir.

Q. Why not? A. Because I didn't ask him, I suppose.

Q. Why didn't you ask him to? A. Well, simply because I had a good woman doing it and she was doing it very satisfactory, and he was going to school.

Q. Who was the good woman that was doing it? A. That is the woman that I have been trying to think of her name.

Q. Can you give her name? A. No.

Q. Why did Aggie Torsky lose her job? A. I couldn't get her, and she wasn't good enough anyway.

Q. Why didn't you discharge her before? A. They were through when they finished. There was no discharge to it.

Q. This woman that was doing it, she did the work good enough, did she, after Maurice was appointed? A. Yes; she done it good.

Q. What did she do? A. She mopped twice a week, cleaned the windows and cleaned all the woodwork.

Q. How frequently did she clean the windows? A. Every time they needed it.

Q. Well, how frequently was that? A. Well, I should say probably once in two weeks, or as often as once in two weeks, I ain't certain.

Q. How many windows were there to clean? A. Well, eight, I think, outside windows; seven or eight; I can't say which; large windows.

Q. Why didn't you have her get the four hundred dollars instead of Maurice? A. I don't know.

Q. Any reason for that? A. No.

Q. She did the work, didn't she? A. Yes.

Q. Was she paid all it was worth? A. That I can't say.

Q. Did you pay her all that it was worth to do it? A. I paid all she asked.

Q. You paid her all she asked? A. Yes.

Q. How much did you pay her? A. Well, I don't know whether it was eight or twelve dollars a month; I ain't certain.

Q. Do you know anything about it. A. I do, sir.

THE PRESIDENT: We will suspend here.

MR. RAINES: I desire to give notice that at 2:30 o'clock at the opening of the joint session I shall move a call.

THE PRESIDENT: The Chair suggests a call of the Senate be made for 2:25. The Senate gives notice that on the reconvening at 2:20 there will be a call of the Senate.

MR. ROGERS: I desire to give notice at the same time a similar motion will be made for a call of the Assembly.

THE PRESIDENT: The gentleman from Broome gives notice a similar call for the Assembly will be made at 2:20 o'clock.

The Clerk will read a communication from the Brandow Printing Company, which will not be a part of the record.

The desk informs the Chair that the copy furnished to the printer is taken from the printed case. What is not found there is typewritten. On the part of the printer, I will state that the whole of yesterday's proceedings was received by 12 o'clock.

MR. GRADY: I think it wise to send a response to the suggestion which the State Printer makes that his furnishing these on time is a favor to the joint session. I would suggest that the Clerk of the Assembly, responding to the communication on behalf of both the Senate and Assembly, that if the

favor is onerous at any time we can dispense with his services by having a journal printed under the direction of the counsel for the State, and then it is not a matter for the State Printer. Any time that this favor which is extended to us worries him too much we can at once make an occasion when he will be relieved of that.

**THE PRESIDENT:** The joint Assembly will stand in recess until 2:30 o'clock.

The Senate having returned to the Senate Chamber, Mr. Raines moved that the Senate stand in recess until 2.25 p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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#### TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The President then left the chair and with the Senate proceeded to the Assembly Chamber.

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#### JOINT SESSION—ASSEMBLY CHAMBER.

**MR. RAINES:** Mr. President, I ask that the roll of Senators be called.

By direction of the President the Clerk of the Senate called the roll of the Senate, when the following members responded:

Ambler	Coggeshall	Frawley	Lewis ●	Riordan
Armstrong	Cooper	Gardner	L'Hommedieu	Saxe
Brackett	Cordts	Gates	Malby	Stevens
Brown	Davis	Grady	Marks	Tully
Burr	Drescher	Hasenflug	McEwan	Warnick
Carpenter	Fancher	Hawkins	Page	White
Cassidy	Fechter	Hinman	Prime	Wilcox
Cobb	Foley	Kehoe	Raines	

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**MR. GRADY:** The Senator from the Seventh, Senator McCarrren, is detained for a few moments and while he cannot be at the opening of the session will be here in a very short while.

**MR. RAINES:** I ask the Clerk to note that Mr. Allds, Elsborg and Hill were excused.

**THE PRESIDENT:** The Clerk will note the excuse of the Senators.

MR. GRADY: The Senator from the Thirteenth, I understand, is on his way to the session.

MR. COGGESHALL: I ask for excuse for Senator Goodsell; he is in the city and he is to be here immediately.

MR. RAINES: In view of what is stated by the Senators being on their way here I will not at this time move the call, Mr. President. At any time if necessary I shall do so.

MR. ROGERS: Mr. President, preliminary to moving the call which I gave notice I would do if necessary, I would request that the roll of the Assembly be called to ascertain who are present.

By direction of the President, the Clerk of the Assembly called the roll of the Assembly, when the following members responded:

Agnew	Coutant	La Rue	Prince	Steele
Allen F E	Cunningham	Lewis	Reilly	Thompson J A
Anderson	Dodd	Maier	Rigby	Tompkins
Apgar	Ellis	Matthews C R	Rogers	Waddell
Bass	Etzel	Merritt	Rosenstein	Wade
Becker	Evans	Miller	Santee	Wagner
Bedell	Foelker	Monroe	Schoeneck	Wadsworth
Beebe	Foster	Moreland	Scovill	Wainwright
Beihlf	Fuller	Murphy	Shanahan	Wemple
Brady	Gardner	Newton	Sheldon	Whitney F G
Burnett	Hammond	Ogden	Sherry	Whitney G H
Burns	Hapeman	O'Neill	Shuttleworth	Wiegand
Burzynski	Hartman	Palmer	Smith A P	Wilsnack
Cadin	Hastings	Parker	Smith A E	Wilson
Cahn	Hooker	Patton	Smith J E	Wolf
Callahan	Hornidge	Pendry	Smith J T	Wood F C
Charles E E	Hubbs	Perry	Smith R H	Wood F X
Charles W B	Hurd	Phillips	Standart	Yale
Coon	La Fetra	Prentice	Stanley	Speaker

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MR. SHELDON: Mr. Thonet, of the Twelfth District of Kings, was called home yesterday but expects to be here to-morrow, and I ask that he be excused.

MR. PALMER: I have a telegram from Mr. Everett of New York saying that he was detained yesterday and this morning but is on his way here. I ask that he be excused and that the journal contain a record of it.

MR. PRESIDENT: The gentlemen will be excused unless there is objection.

MR. STANCHFIELD: Mr. President, and gentlemen of the joint session, in behalf of Judge Hooker and voicing the approval of all of the counsel represented, I desire to call the attention

of the joint session to an article which appeared in the New York Press, under date of July 12th some excerpts from which I read for the information of this session :

“ Big Lobby for Justice Hooker; Scandal is Thick in Albany;

\* \* \* \* From the regular correspondent of the Press.

Albany, July 11th.—It cannot be denied that powerful influences are at work to keep Justice Hooker on the Supreme Court bench. There is both politics and boodle in this movement. Republicans and Democrats are concerned in it. Gov. Higgins downstairs does not seem to be a bit disturbed by the cloud of scandal hanging over the legislature.”

In another portion of the article appears this phraseology, “Lobbying in Assembly.” “The roll call occupied nearly half an hour on this simple motion. It was seen early in the call that defeat was about to come for the proposition to restrict the evidence to the code rules. Immediately Hooker’s lawyers began to lobby among the members of the Assembly. When the roll was completed the vote was 49 to 47 against. The clerk, instead of announcing the vote, waited until further lobbying was done.”

Now this is a judicial proceeding. It is a trial before the highest court in this state. If we were proceeding in any civil tribunal and an article of the gravity of the one to which I invite your attention appeared in the newspaper press, the Judge presiding would have the power and the duty would be imposed upon him when the matter was called to his attention, to call before him and punish for contempt, the man who indited and gave forth this article. Now in so far as any charges are made against Judge Hooker or the counsel that represent him, that we have tried by the use of money or any other means, direct or indirect to influence the action of any member of this joint assembly, we say it is an infamous, wicked and scandalous lie. We ask here of this body that in behalf of Judge Hooker and for his protection that some action be taken by you, not only to punish the man who wrote this article, but to insure us in the



future against the repetition of that sort of outrage. All we ask is fair play, and we have a right to proceed with this trial without having the newspaper press of this state accuse Judge Hooker and his lawyers of trying to bribe with money the men who make up the joint session of this legislature.

**SENATOR RAINES:** The statement made by the counsel for Judge Hooker in respect to this matter as affecting Judge Hooker, could be more emphasized as a matter reflecting upon the Legislature of this State now assembled in joint session. After careful inquiry we find ourselves unable in any way to ascertain the name of the person who wrote this article, which the paper says is from the regular correspondent of the Press. So far as we ascertain the regular correspondent of the Press has not been in Albany. I therefore move, Mr. President, in view of the situation, that the President of this body issue the subpoena of the body to Mr. Irving Wardman, the editor of the Press, to appear and give evidence before this joint session.

**THE PRESIDENT:** The question is upon the motion of the Senator from the Forty-second. Those in favor say aye. (Cries of "aye.") Opposed, no. The motion is carried.

The Chair would inquire of the joint assembly at what hour they desire the presence of the gentleman.

**SENATOR RAINES:** Forthwith.

**THE PRESIDENT:** You may proceed, Mr. Hurd.

**MR. COMAN:** Mr. President, will the Clerk note the appearance of Hon. William P. Goodelle, counsel for the State Bar Association.

**THE PRESIDENT:** The Clerk will note the appearance as requested by Mr. Coman on behalf of the State Bar Association.

**MR. COMAN:** Continuation of the evidence of Melvin H. Taylor, page 849, the first question.

Mr. Coman read the questions and Mr. Lawyer the answers from Mr. Taylor's testimony as follows:

Q. How do you know? A. Well, I know, because I paid her.

Q. Have you any memoranda showing it? A. No, sir.

Q. Did you keep any memoranda at the time? A. I did during the month.

Q. During the month? A. Yes.

Q. Did you pay her at the end of the month, or how? A. No, sir; I paid her every day when she worked there.

Q. You paid her when she worked? A. Yes.

Q. Do you know anything about it? A. I do, sir.

Q. Just as she worked and you kept a memoranda of it? A. I didn't keep it only during the month.

Q. Well, I say at the time you kept it? A. Yes, sir.

Q. So that you knew at the end of the month how much you had paid her? A. Yes, sir.

Q. And then you would know how much was going to Maurice above that? A. Yes, sir.

Q. Now, have you any recollection of the amount you paid that woman? A. No, sir; I can't tell.

Q. You haven't any memoranda showing that? A. No, I haven't. Do you want me to tell you how I kept it?

Q. When I do I will ask you, I will ask you to produce your check stubs. A. There it is. (Witness produces check book.)

Q. Is this the book which I now show you, containing the stubs of the checks that you kept, for checks belonging to you as postmaster? A. Sir?

Q. I ask you if the book which I show you is stubs of the checks which you drew as postmaster? A. Yes; they are.

Q. I ask you to look at stub No. 751, and read it to the committee. The one at the bottom of the page there? A. No. 751, October 8, 1903, M. H. Taylor, check paid out for "chair-woman," \$18.81.

Q. Charwoman, you mean the charwoman who did the cleaning, don't you? A. Yes, sir.

Q. How long a time did that pay for? A. Well, sir; I can't tell you.

Q. Didn't that pay from July 1, 1903, down to the date of it?  
A. I can't say.

Q. Can you tell by reflecting on that a moment? A. I don't think I can.

Q. Very well. Now, did you have any conversation with Maurice Hooker about the work he was to do there? A. I think I did, sir.

Q. What was it? A. Why, I don't know just what it was; I can't recall it. I can't recall anything I said a couple of years ago, or a year and a half ago; I can't remember.

Q. Do you mean it quite as broad as that, that you can't recall anything you said a couple of years ago? A. Well, my memory isn't as good as it was a year ago.

Q. Answer my question. Do you mean to put it as broad as that, that you can't recall anything that you said a couple of years ago? A. I didn't say it.

Q. That is what I understood you to say. A. Well, I can't remember the conversation that I had with him.

Q. Did you tell Maurice that he needn't appear for work? A. Did I tell him that he needn't?

Q. Yes. A. I think I told him when I wanted him I would let him know.

Q. You got him appointed because you wanted him to do the work didn't you? A. I did; yes, sir.

Q. And then you didn't have him to do the work because you didn't want him to do it; is that right? A. Well, not in that sense.

Q. Well, in what sense is it right? A. Well, I expected when I got him appointed that he would do the work just as much as I expect I am sitting here.

Q. Then why didn't you have him do it? A. Simply because I didn't.

Q. Well, there was some reason for it, wasn't there? A. No; there wasn't a reason on earth more than this woman——

Q. (interrupting) There was no reason on earth why you didn't? Was there any reason on earth why you didn't ask

Maurice Hooker to go there and work? A. Well, I don't know that there was any reason that I shouldn't have asked him to. I simply did not.

Q. Why didn't you do it? A. I can't tell you why I didn't.

Q. Can you give any explanation why you didn't ask him to do it? A. No, sir.

Q. Can you give any explanation why you paid this woman, as you say, from eight to twelve dollars a month and paid the balance to Maurice Hooker? A. Well, I paid her because she done the work and should be paid, of course.

Q. Why did you pay the balance to Maurice? A. Why?

Q. Yes. A. Because he had the appointment there. Now you ask me to explain it and I will tell you.

Q. Didn't you get him the appointment so he could have that balance? A. No, sir.

Q. Didn't have it in your mind at all? A. No, sir.

Q. Why did you fix the price at four hundred dollars per year? A. Because the janitors are allowed by the rules of the department from four to six hundred dollars a year.

Q. Well, why did you fix the sum at four hundred dollars a year? A. I can't tell you.

Q. He was appointed simply as a laborer, wasn't he? A. Well, you can call it a laborer or janitor.

Q. Were there any other duties for a laborer to perform than simply do this mopping and cleaning of the windows that you spoke of? A. That is all. ●

Q. Now I want to know again if you can give us any reason why you named the sum of \$400 per year? A. I can't.

THE PRESIDENT: The stenographer will note the presence in the chair of the President pro tem of the Senate.

(President pro tem Raines in the chair.)

MR. COMAN, ● continuing:

Q. Didn't you know that the work could be performed for less money? A. Didn't I know it?

Q. Yes, sir. A. I know you couldn't hire a man for less than that.

Q. Answer my question please. Didn't you know it could be done for less money? A. Probably I did.

Q. Then why did you ask for it at \$400 per year? A. Well, sir, I don't know.

Q. When Justice Hooker wrote that letter recommending the appointment, that has been read here, did you talk with him about how much it was worth? A. No, sir.

Q. Anything said on the subject? A. Not that I remember at all.

Q. He simply endorsed your recommendation by that letter? A. That is all I asked him to do.

Q. He asked no question as to how much it was worth? A. No, sir.

Q. Didn't ask how much you had been paying? A. No, sir.

Q. Didn't ask who had been doing the work? A. No, sir.

Q. Didn't ask what the amount of work you wanted done, additionally? A. No, sir.

Q. Didn't ask any question showing the value of the services there? A. No, sir.

Q. You are clear on that, are you? A. I think so.

Q. As clear as on the rest of the matters that you have been telling about, have you? A. I guess so.

Q. Did Maurice Hooker visit at your house any? A. Sir.

Q. Did Maurice Hooker visit at your house any? A. I don't know that he did.

Q. Was he ever in your house? A. I don't know; I think he has been in my barn.

Q. Was he ever in your house? A. I couldn't say, sir.

Q. Had you ever seen him from the time you saw him as a small boy at his father's house, as you have stated, ten or twelve years ago, and the time when he was appointed laborer? A. Yes, sir.

Q. Were you asked that question before the Bar Association committee? A. I do not know.

Q. Were you asked this question: "Q. Did you ever know him at his father's in Villenova?" and did you answer: "I think I did; yes, sir"—did you say that? A. I think so; yes, sir.

Q. Were you asked: "Q. When?" and did you answer "I don't know; that is a good while ago"—did you say that? A. If that is there I said it.

Q. Yes, it is here. Then you were asked: "Q. About how long?" and did you answer: "Well, I should say six or seven years ago"? A. What do you mean from the time that I got him appointed?

Q. No, I am not asking you for any meaning at all; I am asking you simply if you were asked these questions and made these answers: "About how long?" "A. Well, I should say six or seven years ago."

By MR. FISH:

Q. He asked you if you made that answer then? A. I probably did if it is there.

By MR. STEVENS:

Q. Then were you next asked this question: "Q. Had you seen him since that time to the time he came here to school?" and did you answer: "I don't know whether I had or not; probably had?" A. I think that is right; I had seen him.

Q. No, but did you answer: "I don't know whether I had or not, probably had?" A. Well, that is probably right there.

Q. Now can you tell one place where you had ever seen Maurice Hooker, or had any conversation with him prior to writing that letter to Mr. Beavers, asking his appointment as a laborer? A. Yes, sir; at his father's in the town of Villenova.

Q. When was that? A. I can't state the day, nor the year, nor the month.

Q. It was several years ago was it not? A. Oh, no; it was not so long; at the time his father lived in Villenova, at that time.

Q. When was it? A. I can't state the year.

Q. Give us an idea; was it this six or seven years ago that you speak of? A. I don't think it is as long as that.

Q. There was only one occasion you had seen him there? A. I had seen him a number of times there and I had seen him in Fredonia, he used to drive over there.

Q. Had you ever seen him to have any conversation with him?

A. Yes; I had talked with him casually.

Q. Before he was appointed laborer? A. Yes, sir.

Q. Where? A. At Villanova.

Q. He was a little boy, wasn't he then? A. I don't know.

Q. He was sixteen when he was appointed, in 1902? A. I don't know how old he was.

Q. You reported his age as sixteen? A. I don't know that I did.

Q. If it was stated there before the Bar Association committee, that that was six or seven years ago, that would make him only nine or ten years old, wouldn't it? A. Well, I don't know.

Q. Can't you perform that mathematical operation? A. Yes.

Q. Well, what do you think about it? I will pass it if you don't wish to answer. Can you tell one subject that you ever conversed with him on in your life? A. Yes; horses and cattle over at his father's.

Q. When you were at his father's house? A. Yes.

Q. How did you know he was attending school at Fredonia, who told you about it? A. I must have seen him there going to school.

Q. You must; is that a deduction that you make in your mind? A. I know he was moved there.

Q. Is that a deduction you make in your mind, or do you recollect seeing him? A. I recollect seeing him there when he moved there to go to school.

Q. That is something definite; now where did you see him? A. Well, first I think I saw him over where he lived in the house.

Q. You saw him over where he lived; that is your answer? A. Yes, sir.

Q. Now where was that? A. On Newton street.

Q. Was that before or after you requested his appointment as laborer? A. Before.

Q. How long before? A. I can't tell you.

Q. Was it a week before? A. I can't say.

Q. Now I ask you again if you don't know that he didn't commence to go to school until about the first of February? A. I don't know when he commenced to go to school.

Q. Now what were you doing over at that place on Newton street? A. What was I doing?

Q. Yes. A. I don't know that either.

Q. Did you use the expression "When he moved in?" A. I did. I think; I think I saw him move there.

Q. Saw who move there? A. I think he fetched some things over to keep house; I am not certain, but it seems to me I saw him moving into the house on Newton street.

Q. Did you talk with him at that time? A. I don't know whether I did at that time, but I had a number of times.

Q. Did you talk with him at that time? A. I don't know that I did; I can't say.

Q. When did you next talk with him? A. I can't tell you when.

Q. Did you ever talk with him in Fredonia except on the occasion when you saw him at Justice Hooker's office? A. Yes, sir.

Q. Before that time, before that conversation? A. Yes, sir.

Q. Well, now, where? A. I can't tell you.

Q. You can't tell what was talked about, either, can you? A. No, sir.

Q. You did see him up in Justice Hooker's office, didn't you? A. I don't know that he was there that day; I can't say for certain that he was there; I don't remember it.

Q. Will you say that he wasn't there? A. No, nor that he was; I can't remember.

Q. Wasn't he present when this letter was written? A. I can't remember whether he was there or not, sir.

Q. Did you ever go to Justice Hooker's office with him? A. No, sir; I don't think I did.



Q. Did he ever come here when you were in Justice Hooker's office? A. Not that I know of; no, sir.

Q. You don't know of being there with him at all? A. No, sir.

Q. How do you answer that question? A. I said no, sir.

Q. Now, Mr. Taylor, at some time you were asked to refund the moneys, by the department, that you paid Maurice Hooker, were you not? A. Sir.

(Question repeated.) A. Yes, sir.

Q. When was that? A. I can tell you by the documents I have got; that is the way I can tell.

Q. Have you any recollection? A. No.

Q. Who asked you? A. To refund it?

Q. Yes, what person? A. The department.

Q. Didn't some person come to you and ask it? A. some person?

Q. Yes.. A. Oh, the inspector was there.

Q. Now, you say the department asked you to refund the money; did the department do it by writing you a letter? A. Yes, sir; you can call it a letter.

Q. Did the letter come by mail to you? A. I have got it right here.

Q. I ask you if the letter came by mail? A. I never had what you would call a letter. You could call it a letter, or whatever it is. I have it with me.

Q. I didn't call it; you said it was a letter. A. Well, I call it a letter.

MR. FISH: He wants to know if you received it by mail?

THE WITNESS: Yes; not the first time I was asked to pay it back.

Q. That is what I am asking about, the first time; who did ask you first to pay it back? A. Mr. Cochrane.

Q. He was a postoffice inspector? A. Yes, sir.

Q. Did he ask for the money to be paid to him? A. No, sir; he did not.

Q. Did he assume to ask from the postoffice department that it be paid back? A. Yes, sir.

Q. Or did he suggest that it be paid back? A. He said I would have to pay it back.

Q. He said you would have to pay it back? A. Yes.

Q. He did not ask you to pay it back, did he? A. I don't know that he did first.

Q. Then who was the first person that asked you to pay it back? A. The Government.

Q. Well, I will have to go over the ground again. Did the Government do it by letter? A. Yes, sir.

Q. Where is the letter? A. Right here (Producing same.)

Q. I think you must be mistaken, Mr. Taylor. If you will look at these papers you won't see anything about this. Point it out to me, the papers that refer to Maurice Hooker? A. You ought to be able to read it. Right there (indicating).

Q. Is this (indicating) the paper that you refer to as the letter from the department? A. That is what I mean, yes, sir.

Q. Dated August 8, 1903, is it not? A. Yes, sir.

The letter, being Exhibit 176, offered in evidence, and the following is a copy of the same:

INFORMING LATE POSTMASTER THAT BALANCE DUE  
THE UNITED STATES MUST BE PAID.

C. H. J. C.

Should any reply be necessary,  
please quote above initials.

TREASURY DEPARTMENT,  
Office of the  
AUDITOR FOR THE POSTOFFICE DEPT.,  
Washington, D. C., Aug. 8, 1903.

Melvin H. Taylor, P. M.,  
Fredonia, N. Y.

Sir:

You are informed that your postal account has been audited to June 30, 1903, and shows a balance due to the United States of

\$1,650, which must be paid on demand to the postmaster at Dunkirk, N. Y., to whom a collection draft for said amount has been sent.

Should you fail to pay upon demand, the postmaster will at once make a demand upon your sureties.

The above balance is the result of difference which are explained in the following statement, the articles corresponding with those of same letter or number on your quarterly account claimed

by P. M.	as audited.	Differences.
		<hr/>
		Due United States: Due P. M.
		\$1,650.00
		<hr/>

To balance .....

Balance due the U. S. .... \$1,650.00

Respectfully yours,

HENRY A. CASTLE,

Auditor.

#### REMARKS.

Amount illegally paid to Frank P. Ball on your clerk's payroll from April 1, 1901, to Dec. 31, 1902, \$1,050.

Also amount illegally paid to Maurice Hooker on clerk's payroll from Jan. 1, 1902, to June 30, 1903, \$600.00.

The Department has requested these charges because Mr. Ball and Mr. Hooker performed no service in the postoffice at Fredonia, N. Y., during the periods mentioned.

The above amount is due under your third and last bond, dated Jan. 8, 1901.

Q. Did you also receive at the same time the paper which I now hand you, dated August 8, 1903? A. Yes, that is right.

I offer that in evidence, being Exhibit 177, and the following is a copy of the same:

C. H. J. C.

Should any reply be necessary,  
please quote above initials.

JULY 12.]

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**INFORMING LATE POSTMASTER THAT BALANCE DUE  
THE UNITED STATES MUST BE PAID.**

**TREASURY DEPARTMENT,  
Office of the  
AUDITOR FOR THE POSTOFFICE DEPT.,  
Washington, D. C., Aug. 8, 1903.**

Melvin H. Taylor, P.M.,  
Fredonia, N. Y.

Sir:

You are informed that your postal account has been reaudited to March 31, 1900, and shows a balance due the United States of \$234.79, which must be paid on demand, to the postmaster at Dunkirk, N. Y., to whom a collection draft for said amount has been sent.

Should you fail to pay upon demand, the postmaster will at once make a demand upon your sureties.

The above balance is the result of difference which are explained in the following statement, the articles corresponding with those of same letter or number on your quarterly account.

Claimed by P. M.	As audited.	Differences.
		<hr/>
		Due U. S. Due P. M.
		\$234.79

To balance .....	
Balance due the U. S.....	\$234.79

Respectfully yours,

HENRY A. CASTLE,  
Auditor.

**REMARKS.**

Amount illegally paid to Frank P. Ball on clerk's payroll from November 10, 1899, to March 31, 1900.

The Department has requested that this amount be charged to your account for the reason that Mr. Ball performed no service in the postoffice at Fredonia, N. Y., during the period mentioned.

The above amount is due under your first bond, dated October 4, 1899.

Q. I show you another paper (presenting same) dated August 8th, 1903, and ask you if you received that at the same time? A. Yes, sir.

I offer that in evidence.

Marked "Ex. 178," and the following is a copy of the same.

C. H. J. C.

Should any reply be necessary,  
please quote above initials.

INFORMING LATE POSTMASTER THAT BALANCE DUE  
THE UNITED STATES MUST BE PAID.

TREASURY DEPARTMENT,

Office of the

AUDITOR FOR THE POSTOFFICE DEPARTMENT,

Washington, D. C., Aug. 8, 1893.

Melvin H. Taylor, L. P. M.

Fredonia, N. Y.

Sir: You are informed that your postal account has been re-audited to March 31, 1901, and shows a balance due the U. S. of \$600, which must be paid on demand, to the postmaster at Dunkirk, N. Y., to whom a collection draft for said amount has been sent.

Should you fail to pay upon demand, the postmaster will at once make a demand upon your sureties.

The above balance is the result of differences which are explained in the following statement, the articles corresponding with those of same letter or number on your quarterly account:

Claimed by P. M.	As Audited.	Differences.
Balance . . . . .		\$600.00
BAL. DUE THE U. S. . . . .		600.00

Respectfully yours,

HENRY A. CASTLE,

Auditor.

## REMARKS.

Amount illegally paid to Frank P. Ball, on the clerk's pay roll of your office, from April 1, 1900, to March 31, 1901.

The department has requested this charge in your account for the reason that Mr. Ball performed no service in the postoffice at Fredonia, N. Y., during the period mentioned.

The above amount is due under your second bond dated Feb. 20, 1900.

Q. Mr. Taylor, did the department at Washington, or any person assuming to act on its behalf, ever demand of you that you repay to the government the amount paid by Mr. Moore while he was postmaster to Mr. Ball? A. Mr. Ball asked me,——

Q. (interrupting) That question can be answered yes or no. A. Well, not unless it is included in those papers there (indicating), his amount. I don't know whether it is or not.

Q. I wish you would look these papers over and see if there is any demand in any one of those for the sum paid by Mr. Moore to Mr. Ball? A. No; I don't think that they do.

Q. Whatever drafts were drawn for the repayment of these moneys were sent to Postmaster Barnard at Dunkirk, were they not? A. Yes, sir. F. B. Barnard.

Q. Did Mr. Barnard present to you the draft that was drawn on Mr. Moore? A. He did not.

Q. He never asked you to pay it? A. No, sir.

Q. He did present to you the drafts that were drawn on you for what you had paid Ball, didn't he? A. Yes, sir.

Q. And also for what you had paid Maurice Hooker? A. Yes, sir.

Q. Did you go to Mr. Barnard and ask if he had such a draft on Arthur Moore? A. No, sir.

Q. Did you learn that he had such a draft on him? A. Yes, sir.

Q. Who told you? A. I can't say who told me; I don't know. Hold on. I will take that all back. I think Mr. Barnard told me

when he presented the drafts—I have them here now—when he presented them he told me he had one on Arthur Moore.

Q. Did Mr. Barnard come to Fredonia? A. He did.

Q. You think he told you that? A. I think so: I am very certain of it.

Q. Did he tell you the amount? A. I don't know whether he did or not. He left my office and went over to Mr. Moore's office.

Q. Did you see him again the same day? A. I think not.

Q. Where did you see him next? A. When I paid the money.

Q. Paid what money? A. The money they had drawn on me for.

Q. Now, didn't you pay the moneys, or the draft that was drawn upon Arthur Moore before you paid the other moneys?

A. Didn't I?

Q. Yes. A. Yes, sir.

Q. Where did you pay that? A. To Mr. Barnard.

Q. Where? A. In the postoffice of Dunkirk.

Q. You went over there and paid him the amount that was due, or claimed to be due, from Arthur Moore before you paid him any other moneys? A. Yes.

Q. You went to the postoffice at Dunkirk and paid Mr. Barnard the sum that was claimed by the department from Arthur Moore before you paid Mr. Barnard any other moneys, didn't you? A. Yes.

Q. How much was it? A. \$600, I guess.

Q. When did you do that? A. The last of September, I think.

Q. What year? A. 1903, I think.

Q. How long was that before you paid Mr. Barnard the moneys which the department demanded of you? A. I paid that along the first of October.

Q. How many days before? A. Well, sir; I couldn't say how many days; about the last of September—

Q. (interrupting): Wasn't it at least two weeks before? A. I don't hardly think it was.

Q. Will you say it wasn't at least two weeks before you paid Mr. Barnard the moneys which were demanded of you that you

paid Mr. Barnard the moneys that had been demanded of Arthur Moore? A. I can't state just how long it was.

Q. It was several days, was it not? A. It was a few days before; I cannot state the number of days.

Q. How many days do you call a few days, one or two, or six, or eight? A. Well, I don't know.

Q. Then if I understand you correctly you went over to Dunkirk, and your sole business there was to pay Mr. Barnard the moneys that were demanded of Arthur Moore; am I right in that? A. No, sir; I don't think you are.

Q. Well, tell me where it is wrong then? A. When I got this—will you allow me to tell?

Q. No. I ask you did you go over to Dunkirk and see Mr. Barnard?

Q. You went to Dunkirk and saw Mr. Barnard, didn't you? A. I don't think I went down there until I took the money down and paid him.

Q. Well, what money? A. Why the amount that they had drawn on Arthur Moore.

Q. That is what I mean? A. Yes, sir.

Q. Your sole business there that day was to pay him the amount they had drawn on Arthur Moore? A. Yes, sir.

Q. That is all you did pay him at that time, wasn't it? A. Yes.

Q. At that time did you say anything to Mr. Barnard as to when you would pay what they had drawn on you? A. Yes, sir.

Q. What did you say to him? A. I can't just tell you; I can't give the words.

Q. Did you say to Mr. Barnard you would pay as soon as you could raise the money? A. I didn't state it in just that way.

Q. How did you state it? A. I would have to explain it so the gentlemen would know.

Q. No, just what you did state; I don't care for any explanations? A. Then I can't answer your question.



Q. Did he ever come here when you were in Justice Hooker's office? A. Not that I know of; no, sir.

Q. You don't know of being there with him at all? A. No, sir.

Q. How do you answer that question? A. I said no, sir.

Q. Now, Mr. Taylor, at some time you were asked to refund the moneys, by the department, that you paid Maurice Hooker, were you not? A. Sir.

(Question repeated.) A. Yes, sir.

Q. When was that? A. I can tell you by the documents I have got; that is the way I can tell.

Q. Have you any recollection? A. No.

Q. Who asked you? A. To refund it?

Q. Yes, what person? A. The department.

Q. Didn't some person come to you and ask it? A. some person?

Q. Yes.. A. Oh, the inspector was there.

Q. Now, you say the department asked you to refund the money; did the department do it by writing you a letter? A. Yes, sir; you can call it a letter.

Q. Did the letter come by mail to you? A. I have got it right here.

Q. I ask you if the letter came by mail? A. I never had what you would call a letter. You could call it a letter, or whatever it is. I have it with me.

Q. I didn't call it; you said it was a letter. A. Well, I call it a letter.

MR. FISH: He wants to know if you received it by mail?

THE WITNESS: Yes; not the first time I was asked to pay it back.

Q. That is what I am asking about, the first time; who did ask you first to pay it back? A. Mr. Cochrane.

Q. He was a postoffice inspector? A. Yes, sir.

Q. Did he ask for the money to be paid to him? A. No, sir; he did not.

Q. Did he assume to ask from the postoffice department that it be paid back? A. Yes, sir.

Q. Or did he suggest that it be paid back? A. He said I would have to pay it back.

Q. He said you would have to pay it back? A. Yes.

Q. He did not ask you to pay it back, did he? A. I don't know that he did first.

Q. Then who was the first person that asked you to pay it back? A. The Government.

Q. Well, I will have to go over the ground again. Did the Government do it by letter? A. Yes, sir.

Q. Where is the letter? A. Right here (Producing same.)

Q. I think you must be mistaken, Mr. Taylor. If you will look at these papers you won't see anything about this. Point it out to me, the papers that refer to Maurice Hooker? A. You ought to be able to read it. Right there (indicating).

Q. Is this (indicating) the paper that you refer to as the letter from the department? A. That is what I mean, yes, sir.

Q. Dated August 8, 1903, is it not? A. Yes, sir.

The letter, being Exhibit 176, offered in evidence, and the following is a copy of the same:

INFORMING LATE POSTMASTER THAT BALANCE DUE  
THE UNITED STATES MUST BE PAID.

C. H. J. C.

Should any reply be necessary,  
please quote above initials.

TREASURY DEPARTMENT,  
Office of the  
AUDITOR FOR THE POSTOFFICE DEPT.,  
Washington, D. C., Aug. 8, 1903.

Melvin H. Taylor, P. M.,  
Fredonia, N. Y.

Sir:

You are informed that your postal account has been audited to June 30, 1903, and shows a balance due to the United States of

Q. Then when you went to Mr. Barnard you asked him what time he could give you upon what you were to pay, did you not?  
A. I think I did, yes, sir.

Q. Just state that over again, what you asked Mr. Barnard on that point? A. Well, I don't know that I could state the exact words.

Q. State the substance of it, Mr. Taylor? A. Well, the substance was that I asked him if he would give me until the last of his quarter.

Q. When would that be? A. That would be the last of the month.

Q. What month? A. Why, September, that would be the end of his quarter.

Q. Why did you ask him that? A. Well, sir, I knew that this money that I paid him he had to report it on his official quarter, that he would send to Washington.

Q. You were asking for time on the amount you were to pay then for yourself? A. Just until——

Q. (interrupting) You hadn't then made arrangements to raise that money had you? A. I hadn't.

Q. Had you then made arrangements to raise the money which you were to pay on your own account? A. Yes, sir.

Q. Then why were you asking for time? A. Oh, I didn't want to pay it until the end of his,—I wanted him to give me until the end of his quarter.

Q. That was only two days off? A. That is true.

Q. Why did you want just two days' time? A. I can't tell you why I did.

Q. Why did you make the note for just the amount of the moneys required from Mr. Moore? A. Because Mr. Barnard couldn't get any extension on it, had got to be paid.

Q. Had Mr. Barnard tried to get an extension on it? A. I think he had, I am not certain. ●

Q. What makes you think he had tried to get an extension? A. Well, sir, he told me so, that is all.

Q. He had written to the Department? A. I think he had.

Q. When were those drafts first presented to you? A. To me?

C. Yes. A. I can't say what date.

Q. I want you to tell me Mr. Taylor why you went and paid Arthur Moore's first? A. Because Mr. Ball asked me to pay it.

Q. Why did he ask you to do that? A. He said if he had got to pay any of it back he wanted to pay it all back and that he——

Q. (interrupting) Why didn't you pay all Mr. Ball's at once instead of dividing it up in pieces? A. Simply because I didn't that is all: I don't know why I didn't.

Q. Can you give any reason whatsoever why you went and paid Arthur Moore's part before you paid your own? A. Only that Barnard said he had got to have it, he couldn't get no extension on it

Q. Why didn't you put these matters all into one note at the Fredonia National Bank, raise it all at once? A. Simply because I didn't.

Q. Had you made your arrangements for it all? A. Yes, sir.

Q. How much, for how much money? A. I think it was thirty odd hundred dollars, thirty-one hundred and something less the check that Mr. Ball gave me for thirty-two dollars and——

Q. (interrupting) Wait a moment. Before the 28th day of September you had made arrangements with the Fredonia National Bank for thirty-one or thirty-two hundred dollars, had you? A. I think so, yes, sir.

Q. You knew how much that amount was? A. Yes, sir.

Q. Now, I want you to tell me why you didn't take it all at that time to Mr. Barnard instead of taking \$600 of it? A. I did tell you.

Q. You told me you could not tell anything about it; I ask you to see if you have got any reason why? A. Well, I don't know of any.

Q. If you can't answer we will pass it. Now, when you took that money down to pay Arthur Moore account, had Mr. Ball given you any note? A. I think he had, yes, sir.

Q. Are you sure of that? A. I am quite sure of that.

Q. How much was the note? A. \$2,500.

Q. Had he paid you any money? A. Yes, sir.

Q. How much? A. He gave me his check for, I think it was, thirty-two dollars and some cents.

Q. What was the date of the note Mr. Ball gave you? A. It was October 1.

Q. October 1? A. Yes, sir.

Q. You are sure of that, aren't you? A. I am.

Q. Well, now, he having given you his note for this \$2,500 and you having made arrangements to get all of the money, why didn't you hand it all over to Barnard? A. Why didn't I?

Q. Yes. A. I didn't get it that day; I only got the amount I gave him, the amount for the account of Arthur Moore.

Q. That is what I am trying to impress upon your mind. You say Ball had given you a note for the full \$2,500 and you had made some arrangements with the Fredonia National Bank to raise the \$3,200? A. Yes, sir.

Q. Now, tell me why you made a note to the Fredonia National Bank for but \$600, the Arthur Moore portion, and paid it to Barnard and asked for an extension on the rest that you had got to pay? A. Probably I had been to Dunkirk before and saw Mr. Barnard—

Q. (interrupting) If you can tell, tell us; if you can't tell us say so. A. It seems to me Mr. Barnard came up there again, made another visit to me, and said Moore's had got to be paid. He couldn't get no extension of it and I would have to pay it.

Q. That you would have to pay it, why did he tell you you had to pay it? A. I don't know, he said I would have to, he said it would have to be paid.

Q. Why was Mr. Barnard coming to you for Mr. Arthur Moore's portion? A. Because I think Arthur Moore had refused to pay it.

Then why didn't he go to somebody else, the town pump or somebody else, why did he come to you, what reason was there for it?

THE WITNESS: I can't recall any particular reason.

Q. Now, sir, on your examination before the Bar Association Committee——

Q. (continuing) Were you asked this question: "And did you pay it all at one time?" and did you answer, "Paid the Government?" Remember anything about that? A. If you will read all of it.

Q. I will read it. "Q. And did you pay it all at one time? A. Paid the Government? Q. Yes. A. Yes, sir. Q. All you paid you paid in one payment? A. Yes, sir. Q. How much did you pay the Government? A. I paid them thirty-one hundred dollars."

MR. HOYT: Won't you kindly read that as it is, won't it be a little fairer? "Q. How much did you pay the Government? A. I paid them thirty-one hundred dollars. Q. You paid that all at one time, did you? A. Well, I don't know but I made two payments. I ain't certain about that; I won't say positively that I did all at once."

MR. STEVENS: The evidence was correctly read as far as I read.

MR. FISH: If you want to object, object and call attention to the fact he is misquoting.

Q. "Q. You paid that all at one time, did you? A. Well, I don't know but I made two payments, I ain't certain about that, I won't say positively that I did all at once. Q. Did you pay about six hundred dollars in one payment first? A. Well, I might have done it, I ain't certain." Q. Did that take place? A. I think it did; I wasn't certain whether I had, I couldn't tell I had.

Q. I am asking whether you are certain—— A. (interrupting) I simply want to state——

Q. (interrupting) Were you asked this question——

Q. "Q. Now, what is your best recollection, Mr. Taylor, did you pay the thirty-one hundred dollars all at one time, or did

you pay it in two payments? A. Well, I can't remember. Q. If you paid it in two payments, why did you make two payments of it? A. Well, I can't state that either." Did that occur? A. I think so.

Q. Then were you asked: "Q. Have you the slightest recollection on the subject as to whether you made one or two payments to Mr. Barnard? A. Well, it kind of seems to me that I paid it all at once, but I ain't certain." Did that take place? A. I think it did.

Q. Then were you further asked: "Q. Wasn't there a considerable period of time between the time when the Moore draft was paid and when the other was paid, two or three weeks? A. Well, there may have been, I ain't certain, there may have been. Q. Well, what is your best recollection on that subject? A. Well, my best recollection is I can't remember particularly, I simply remember that I paid it. Q. Have you the slightest recollection on the subject, whether you paid it in one or two payments? A. It seems to me as if I paid it, well, I can't state really, I can't state." Did that take place? A. I think so.

Q. "Q. How many notes did you give at the Fredonia National Bank, one or two? A. Two notes, probably—I think so. I think it is two. Q. What was the date of the first one? A. Well, Now, that I can't tell you just what the date was. Q. What month was it given in? A. Well, I will tell you. It was near the same day the payments began of my quarter. Q. What was the amount of the first note that you gave at the Fredonia National Bank? A. Well, I think it was just what Frank Ball, what he drew through Arthur Moore. Q. That was the amount of the first note? A. No, I don't say it was. Q. That is what I was asking you? A. I can't tell just it—I think I paid it, it seems to me as if I paid that, that was drawn on me first. Q. How much was that? A. It was twenty-five hundred dollars. Q. Did you give your note for that?"—are you listening to what I read, Mr. Taylor? A. Yes, sir.

Q. "A. Yes, sir. Q. Then when did you get the money to pay the Moore matter? A. Well, if I didn't get it all at once I got it when I paid that draft. Q. When did you pay that draft, did you pay it before or after that draft on you? A. I really can't say whether I did, I don't know; I know I paid them both. Q. Did you go to the bank for money once or twice? A. Well, if I didn't pay them both at once I went there twice. Q. Well, which was it, did you go once or twice? A. Well, really, I can't say just how I did do it. Q. Did you take the money with you both times, or did you draw a check? A. No, I didn't draw no check, I paid currency. Q. When did Ball give you his note, at the time the first payment was made or the time the second was made? A. Probably it was the time the first. Q. That is, when you paid the six hundred dollars? A. No, I don't say whether it was or not. I can't remember. I wish I could remember." Now, did that take place as I have read it? A. I think so.

The President resumed the chair.

Mr. Stevens relieves Mr. Coman and reads questions.

Q. Now, Mr. Taylor, I ask you once more after going over this matter, have you any explanation of any kind to offer why you paid the six hundred dollars before you did the remaining twenty-three hundred dollars?

THE WITNESS: That was just the way of it.

Q. Mr. Ball, you say, had given you his note for the full amount? A. Yes, sir, well, gave me his note for \$2,500.

Q. And the money or check for the balance, thirty-two dollars and some cents? A. Yes.

Q. Why did he date the note October 1 when the transaction—A. (interrupting) he wanted to make it even, that is all I know, he proposed to date it that date.

Q. Now, having got Mr. Ball's note for the twenty-five hundred dollars and the thirty-two dollars cash, why didn't you go and pay that all to Mr. Barnard instead of paying only part? A. I got an extension for a few days.



Q. Why did you get an extension? A. I can't tell you why I got it.

Q. Was it necessary in order to enable you to raise the money somewhere. A. Well, it may have been.

Q. Well, it may not have been, too, I suppose? A. Well, I don't know, it was quite a bit of money for me to raise.

Q. Very likely, but you stated you had already made your arrangement with Mr. Green at the Fredonia National Bank to raise it? A. I guess so.

Q. Had you made the arrangement? A. I had.

Q. With whom? A. With Mr. Green.

Q. Having made the arrangement, why didn't you pay it all at once? A. Well, sir, I can't tell you why I didn't pay it all at once without it was he had told me previously that this he had got to have, and I didn't want to pay any more money in and make any more interest on it.

Q. What distinction was there between what Moore had got to pay and what you had got to pay; why had he got to have one before he had the other? A. Well, as I stated, I think Mr. Barnard told me that must be paid or else they would commence proceedings.

Q. You were anxious to stop the proceedings then, were you? A. Well, they would sue somebody, I don't know who.

Q. So you were anxious to stop the proceedings? A. I don't know I was anxious.

Q. Before paying this money to Mr. Barnard on the 28th day of September, 1903, with whom had you talked on the matter? A. I don't know just who I had talked with.

Q. Had you stated the facts to Mr. Green? A. I presume I had, yes, sir.

Q. Have you any recollection on the subject? A. Certainly I have.

Q. Well, did you talk with Mr. Green? A. Yes, sir.

Q. And tell him what this money was needed for? A. Yes, sir.

Q. Who else did you talk with? A. I think I talked with Judge Hooker about it.

Q. Where did you talk with Judge Hooker? A. Well, sir, I can't say just where it was.

Q. Was it in his office? A. I can't state.

Q. Have you any recollection? A. I haven't.

Q. Before you paid any of this money, you had a talk with Judge Hooker then? A. Yes, sir.

Q. How long before you paid it? A. I can't say.

Q. What did you tell him? A. I told him they had drawn on me for so much money.

Q. Did you tell him what it was for? A. I don't know whether I did or not.

Q. Why did you go to Judge Hooker with it? A. I can't tell you that, why I did.

Q. Was that a mere casual conversation, or did you go to see him about it? A. Probably, it was a mere casual conversation.

Q. Met him on the street somewhere? A. I don't say I did, I don't know where I did meet him.

Q. Was it a mere casual conversation? A. I can't state.

Q. Did you go to see him about it? A. I probably met him or went to see him about it.

Q. Well, don't you think you did go to see him? A. I think I did.

Q. Well, now, see if you can remember where you went to see him? A. I can't, I can't state.

Q. Can you tell what you said to him about it? A. Yes, sir.

Q. Tell us what it was? A. I told him the Government had drawn on me for this money.

Q. Tell us what it was you said, you didn't say this money? A. I can't tell anything exactly——

Q. (interrupting) Do you remember that was the language you used to Judge Hooker, that the Government had drawn on you for this money; you didn't use those words? A. I don't know that I did.

Q. What words did you use? A. It is so long now I can't just remember what the words were.

MR. FISH: State the substance of it.

THE WITNESS: I can't state the substance of it.

Q. State the substance? A. That is the substance.

Q. Did you tell him in saying "this money," did you tell him what money it was? A. I don't know whether I did or not, I can't say.

Q. Did you mention Frank Ball's name? A. I presume so, I don't know.

Q. Did you tell him they had drawn on you for money you had paid Frank Ball? A. I presume likely, I can't say.

Q. Well, did you or didn't you? A. Well, I can't state.

Q. Did he ask you why they had drawn on you for Frank Ball's salary? A. I can't state.

Q. Did he express any surprise about it, that the Government had drawn on you for Frank Ball's salary? A. Well, I don't know whether he did or not.

Q. Did he ask the reason for it? A. There was nothing talked that way.

Q. Did you tell him that Frank hadn't done any work? A. No, sir.

Q. Didn't mention that? A. No, sir.

Q. Did he ask the reason why it had been done? A. No, sir.

Q. Did he express any surprise that the Government had drawn on you for the money that you had paid Frank Ball? A. No, sir, not that I remember.

Q. Did he ask the reason why it had been done? A. I don't know, I don't think he did.

Q. Didn't have any curiosity on the subject? A. Not that I remember of.

Q. Did you tell him that the Government had drawn on you for the money you had paid Maurice Hooker? A. Yes, sir.

Q. Did he ask why that had been done? A. No, sir.

Q. Did he ask anything about Maurice? A. No, sir.

Q. Did he ask whether Maurice had been at work or not? A. No, sir.

Q. Did you tell him Maurice had been discharged by the Government, or you had discharged him under the Government's direction? A. Sir?

Q. Did you tell Judge Hooker the Government had directed you to discharge Maurice Hooker from the office? A. I don't know that I did; I don't remember that I did.

Q. Did he know that Maurice had been discharged when you told him the Government had drawn on you for the money you paid Maurice? A. I don't know whether he did or not. asking you to pay back Maurice Hooker's salary? A. I couldn't say that he did.

Q. Did you show him the papers the Government had sent you? A. I don't think I did.

Q. You had them at that time? A. Yes, sir, they were in the safe.

Q. You didn't take the papers to him? A. No, sir.

Q. Why didn't you? A. Well, I don't know why I didn't.

Q. Did you take any legal advice on the subject? A. No, sir.

Q. You didn't go to any attorney and ask him whether you had got to pay that money back or not? A. I didn't.

Q. Did you ask anybody whether you had to pay it back or not? A. No.

Q. Did you ask Judge Hooker whether you shouldn't pay it back or not? A. I don't know whether I did or not, probably I did.

Q. Now, sir, when you asked him whether or not you should pay it back, what did he say to you? A. He told me to do just as I thought best.

Q. Did he seem to think you ought not to pay it back? A. There was nothing of the kind said.

Q. All he said on the whole matter was, do as you thought best? A. Yes, sir.

Q. You hadn't explained to him Maurice didn't do any work? A. No.

Q. You hadn't explained to him that Frank Ball didn't do any work? A. No, sir.

Q. Now, who else did you go to about it besides Judge Hooker?  
A. Nobody.

Q. He was the sole person you went to to confer with on the subject of paying the money back? A. I conferred with Mr. Ball, talked with Mr. Ball.

Q. Did you go and ask Ball whether you should pay it back or not? A. I sent for him and told him it had got to be paid back.

Q. You told him it had got to be paid; why had it got to be paid? A. When the Inspector was there he told me I would have to pay that money back or I would be removed.

Q. Then you based it on what the Inspector said. Now was there any other person in Fredonia whose advice you asked on the subject? A. No, sir.

Q. Just Judge Hooker? A. That is all.

Q. Why did you go to Judge Hooker and ask his advice? A. Well, I don't know, he was a friend of mine.

Q. When you asked his advice, why didn't you tell him the circumstances? A. Well, I don't know.

Q. Why didn't you tell him Ball hadn't done any work in the office? A. I can't state.

Q. Why didn't you tell him Maurice Hooker hadn't done any work in the office?

THE WITNESS: I can't say why I didn't tell him.

Q. Now, sir, while Mr. Ball was on the pay roll, you knew what his business was, didn't you? A. Yes, sir.

Q. You knew that he was conducting a ticket broker's office in Dunkirk, didn't you? A. I supposed he was.

Q. You knew it, didn't you? A. Well, yes, sir, I suppose I did know it.

Q. Common knowledge in that community wasn't it? A. Yes, sir.

Q. On the examination before the Committee of the Bar Association were you asked this question? "Q. You had to keep an account of your receipts and disbursements in the post office, didn't you? A. Well, that there tells all of the money I paid

(indicating stub book.)” Did that take place? A. Yes, sir, I think it did.

Q. Then was that followed by this: “Q. Those are checks for money. Didn’t you have a set of books in your office in which you kept an account of your receipts and disbursements? A. Have a book we keep the receipts in every day.” A. That is right.

Q. Then were you asked this question: “Didn’t you keep an account of the disbursements anywhere. A. No, never had a book to keep an account of disbursements, because when I paid them or paid the clerks, I paid by check.” Did you answer that? A. Yes, sir.

Q. That was correct, was it? A. I think so—well, I didn’t pay them all by checks.

Q. Will you state why didn’t you? A. Well, for instance, the woman that scrubbed, I didn’t pay her by checks.

Q. Well, the clerks? A. Well, the clerks, yes, I paid them.

Q. You paid the clerks by check, did you?

Q. You paid Mr. Ball by checks did you? A. Yes, sir.

Q. You have produced your stub book here? A. Yes, sir.

Q. Have you been subpoenaed for the original checks which you gave as Postmaster? A. The original checks, I don’t know that I have all the original checks that I paid——

Q. (interrupting) Wait just a moment. Did your subpoena call on you to produce here all of the checks which you gave as Postmaster? A. Well, I don’t know whether it did or not.

Q. Did you read it over? A. I did.

Q. Have you got a copy here that was served you, copy of the subpoena? A. No, sir, I haven’t.

Q. Have you got in your possession any of the original checks that you gave—— A. (interrupting) No, sir, I haven’t.

Q. Do you know where they are? A. Well, the checks that I paid to Mr. Ball, that I gave to every one of the clerks, the Government came there and took them from me, and gave me a receipt for them.

Q. Have you got the receipt? A. I think I have in some papers.

Q. Weren't those ever returned to you? A. No, sir, they have never been returned to me.

Q. Sure of that? A. I am very sure that they have never been returned to me; the stub-book shows every one of them.

Q. Well, then you have none of the original checks which you gave Mr. Ball, in your possession? A. I haven't.

Q. Either here or in Fredonia? A. No, sir.

Q. Have you the other checks that you gave as Postmaster in your possession? A. Well, I suppose I have got them, I don't know whether I have them or not.

Q. Why didn't you bring them here? A. Well, I don't know just where they are; that stub book——

Q. (interrupting) Did you look for them? A. Yes, sir, and I couldn't find them; I suppose in my bank book, you know all the bank——

Q. (interrupting) Where did you look for those checks? A. I looked through my house; when I left the postoffice I gathered up all my stuff; them checks they might possibly be in the post-office.

Q. You didn't go to the post office to look for them? A. No, sir, I didn't.

Q. You didn't go to the bank to look for them? A. Well, I know they wouldn't be in the bank.

Q. They might have been left there, mightn't they? A. They might have been. ●

MR. STEVENS: Does the original subpoena call for those checks, Mr. Coman?

THE WITNESS: I didn't so understand it; if I had got them I should have produced every one of them.

Q. You didn't understand it, yet you looked for them? A. Well, I did look for them. ●

Q. Why did you look for them if you hadn't been subpoenaed with them? A. I don't know whether it did call for them or not, to tell you the truth about it, I couldn't say.

Q. Did you ask any body? A. No, I don't know I did.

Q. You have your stubs here, have you? A. Yes, sir, everyone I issued, the whole four years that I was there.

Q. This shows all the checks that you issued to your clerks (indicating stub book)? A. Yes, sir.

Q. You paid your clerks by check? A. Yes, sir.

Q. Now, I wish you would refer to those stubs, as I call the number.

Check No. 2, December 2nd, 1899, F. P. Ball for salary from November 10 to November 30, inclusive, \$34.25. No. 22, January 1, 1900, paid F. P. Ball in full December 1st to December 31st inclusive, \$50.54. No. 32, Fredonia, January 31st, 1900, paid F. P. Ball, in full for month of January \$51.67. No. 43, Fredonia, February 28, 1900, paid to F. P. Ball, \$46.66 in full for month of February.

MR. CARR: That entire account or list of checks was put in later, was it not?

MR. STEVENS: I think so. I am trying to take out this discussion.

MR. CARR: As Exhibit 181.

MR. STEVENS: I offer in evidence Exhibit 181, appearing on pages 883 and 884.

THE PRESIDENT: It is not necessary to read the list of figures on pages 883 and 884, unless requested.

Take in page 883.

Exhibit 181 is as follows:

Checks given by M. H. Taylor to Frank P. Ball.

1899

2 Dec. 2 \$34.25

1900

22 Jan. 1 ●50.54

32 Jan. 31 51.67

43 Feb. 28 46.66

54 April 2 51.67



66 April	30	49.45	
78 June	1	51.10	
99 June	30	49.45	
106 July	31	50.54	
227 Aug.	30	50.54	
233 Oct.	1	48.92	
46 Nov.	2	50.54	
58 Nov.	30	48.92	
70 Dec.	31	50.54	
1902			
295 Jan.	31	51.67	
317 Feb.	28	46.66	
340 March	31	51.67	
373 April	30	49.45	
392 May	31	51.10	
418 June	30	49.45	
437 July	31	50.54	
458 Aug.	30	50.54	to C. M. Ball
480 Sept.	30	48.92	
508 Nov.	5	50.54	
521 Dec.	1	48.92	
1901			
82 Jan.	31	51.67	
100 Feb.	28	46.66	
111 April	1	51.67	
117 April	30	49.45	
134 May	31	51.10	
151 June	29	49.45	
186 Aug.	31	50.54	for July
187 Aug.	31	50.54	for Aug.
205 Sept.	30	48.92	
224 Oct.	31	50.54	
249 Nov.	30	48.92	
269 Dec.	31	50.54	
1903			
543 Jan.	2	50.54	in full for Dec.

Q. Now, Mr. Taylor, I call your attention to a stub No. 85 (doing so). Please read that. A. Fredonia, June 1st, 1900, paid Katherine C. Clark, \$25.54.

Q. Now turn to No. 96, turn right along to the next stub you find of Katherine K. Clark.

THE WITNESS: No. 96, Fredonia, June 30, 1900, paid K. K. Clark check \$24.73.

Q. Now, turn to the next one of Katherine Clark? A. What is the number?

Q. Well, I want you to be sure you get them all in. A. I will have to keep looking until I find it.

Q. Yes. A. July 1st.

Q. What is the number? A. No. 110, July 31st, 1900, paid Miss K. K. Clark \$25.27.

Q. What is the next one? A. There is a spoiled one, I see.

Q. That indicates that check was not used? A. No, it was not. Well, there is one that does not—

Q. (interrupting) Read what appears there. A. Aug. 30, 1900, paid Miss K. K. Clark. That is all I have got there.

Q. Doesn't give the amount? A. No, it does not.

Q. Well, the next one? A. No. 237, October 1st, 1900, paid Miss K. K. Clark, \$24.46.

Q. Go right on to the next one. A. No. 60, paid Miss K. K. Clark—

Q. Give the date. A. November 5th.

Q. What year? A. 1900. Paid Miss K. K. Clark in full for month of October, \$25.27. No. 62, November 30, 1900, paid Miss K. K. Clark, \$24.00.

Q. It says something more there (indicating). A. Well, I don't know, that is—Nov. \$24.46, that means November. No. 74, December 31st, 1900, K. K. Clark in full for month of December \$25.27. No. 86, January 31, 1901, paid K. K. Clark \$25.83. No. 99, February 28, 1901, Miss K. K. Clark, \$25.33. No. 110, 1901—

Q. Date? A. April 1st, K. K. Clark, \$25.83. No. 118, April 30, 1901, Miss K. K. Clark on April Salary \$25.00. No. 135, May 31,

1901, K. K. Clark, \$25.25. No. 152, June 29, 1901, Miss K. K. Clark, June, \$24.73.

Q. Now we will stop right there for a moment. Now, Mr. Taylor, what salary was Miss Clark entitled to during this time, how much per year? A. Well, if that is the first of her commencement, was \$600 per year.

Q. That would be \$50 a month, wouldn't it? A. Yes, sir.

Q. Why did you pay her only \$25.00 a month? A. Well, I can explain that to you; she had to have money to live on during her month. During the quarter I used to pay her, she asked me to pay so much cash, and I would pay her money during the month, I kept track of it in a little slip and at the end of the month I gave her a check for the balance, she asked to be paid that way and I did.

Q. I thought you just told me you paid your clerks by check? A. Well, I did, all but that.

Q. Sure of that, are you? A. I am.

Q. How much did you paid her at a time? A. Who.

Q. Miss Clark. A. Well, I can't tell you, but she asked me to pay—she wanted money during the month and I gave it to her; then I set it down and at the end of the month I gave her the check for the balance.

Q. Have you got those figures you set down? A. I haven't.

Q. You didn't keep them? A. Why, there would be no need of keeping them, my quarter—

Q. Did you pay her out of your pocket? A. I presume I did.

Q. Were you keeping an individual bank account at that time? A. No, I guess I didn't pay her out of my own pocket; I guess I took the money out of the receipts and then kept that right in there and counted it as cash; I think that is the way.

Q. You took the government money? A. Yes, it was government money that was going to her.

Q. Instead of depositing it in the bank, you used to hand out money from the post office receipts during the month? A. Sir?

Q. Instead of depositing the receipts of the post office in the bank in full, you would take out from time to time during the

month certain moneys and hand them to her? A. Well, I took whatever she wanted and handed it, it was charged to me all the while.

Q. Certainly. A. She wanted it paid that way.

Q. Where was it charged to you? A. Where?

Q. Yes. A. I kept it on the slip.

Q. You said the money was charged—— A. That is what I mean charged to me.

Q. How did you keep track of the money in the post office? A. My receipts showed every day how much I took in.

Q. Did you have a book in which it was kept? A. The receipts?

Q. Yes. A. Yes, sir.

Q. Where is the book? A. Well, the book is at home.

Q. Why didn't you bring it here? A. Well, I don't know it called for that book.

Q. Didn't you read your subpoena over? A. Sir?

Q. Didn't you read your subpoena over? A. I said I did, but I didn't suppose that that, I didn't suppose you wanted that.

Q. Well, we want it. A. All there is about it, it shows my receipts from the time I went into the postoffice.

Q. But if you had that amount of your daily receipts and then had your bank account showing how much you put in the bank that would show just how much you kept out, wouldn't it? A. I presume so.

Q. Your bank account has been produced here, hasn't it? A. I guess likely.

Q. Now, your book in the postoffice showing your daily receipts has not been produced, has it? A. No, sir, I haven't produced it.

Q. Were you or were you not subpoenaed with it?

THE WITNESS: I didn't understand you wanted that book; if I had I should have brought it here, most certainly, because there is nothing in it I wish to keep back.

Q. Mr. Taylor, did you after your appointment, familiarize yourself with the postal law so far as it related to your duties as

postmaster? A. Well, I don't know whether I did or not. I know I never owed the government a cent; every time my office was inspected there was neither a cent coming or going.

Q. Did you ever read Section 394 of the Postal Law? A. I don't know as I did.

Q. Will you please look at it here in these Postal Laws and Regulations and see whether you ever read it or not (showing book to witness)? A. You want me to read it?

Q. Glance down over it so you can tell whether you ever read it or not? A. Yes.

Q. You have read it? A. I think likely I have read some of this.

Q. Did you render the quarterly account called for by that section? A. I think I did.

Q. And furnish the pay rolls as required? A. Yes, sir; they went every quarter.

Q. Now, this account had to be sworn to, hadn't it, its correctness? A. The pay roll did not have to be sworn to.

Q. The oath at the foot of the account must be subscribed and sworn to by the postmaster or by the assistant when the latter renders his account, before an officer authorized to administer oaths. You did swear to each one of these reports, didn't you? A. My quarterly reports I swore to, yes, sir.

Q. In those quarterly reports you had to render an account of what had been done with those moneys, didn't you? A. Certainly.

Q. Part of the regulations further reads: "Vouchers for all expenditures, including the clerks and special delivery messengers' pay rolls at offices of the first and second classes must accompany the account." This was an office of the second class, wasn't it? A. I suppose so.

Q. So you had to swear to those expenditures? A. There was no place to swear to.

Q. What did you swear to, what was the oath? A. I don't know what it was.

Q. Did you know at the time you took it? A. I suppose so.

Q. Well, what was it? A. Well, I don't know.

Q. These pay rolls in your office had to have the name of the person? A. Yes, sir.

Q. The capacity in which employed? A. The roster did.

Q. Yes, the roster, that is the pay roll? A. Yes, sir.

Q. The time employed? A. Yes, sir.

Q. And the amount, did it not? A. Yes, sir.

Q. Now, sir, while you were postmaster, was it not the habit to have the pay rolls signed by Mr. Ball before the amount was put in? A. Not that know of.

Q. The pay roll has to be made out in alphabetical order, doesn't it? A. I presume so.

Q. So Mr. Ball stood at the head of the list? A. Yes, sir.

Q. Now, sir, if the pay roll was made out and signed by other clerks, is it not true the amount paid Ball was never put in there? A. I don't know whether it was or not.

Q. Did you attend to that yourself? A. No, sir.

Q. Did you ever see to signing the pay roll? A. I don't think I ever did.

Q. You never made out the pay roll yourself, then? A. No, sir.

Q. What were your duties? A. What were my duties?

Q. Yes, what did you do? A. Well, I done the postmaster business.

Q. What is there in that business? A. Well, I saw everything was kept straight, or tried to.

Q. Did you know the pay rolls were kept straight? A. I supposed they were.

Q. How could you tell without looking at them? A. Took it for granted they were.

Q. Then you don't know about the fact I am asking you about, whether I am correct in my question or not? A. Not exactly, no, sir.

Q. Who was employed in the office, Mr. Taylor, at the time Miss Katherine Clark was appointed there? A. Who was employed?

Q. You are clear on that, are you? A. I think so.

MR. STEVENS: There seems to be something omitted there.  
(Continuing reading.)

Q. As clear as on the rest of the matter that you have been tell-about, have you? A. I guess so.

Q. Did Maurice Hooker visit at your house any? A. Sir?

Q. Did Maurice Hooker visit at your house any? A. I don't know that he did.

Q. Was he ever in your house? A. I don't know; I think he has been in my barn.

Q. Was he ever in your house? A. I couldn't say, sir.

Q. Had you ever seen him from the time you saw him as a small boy at his father's house, as you have stated, ten or twelve years ago, and the time when he was appointed laborer? A. Yes, sir.

Q. Were you asked that question before the Bar Association Committee? A. I do not know.

Q. Were you asked this question: "Q. Did you ever know him at his father's in Villanova?" and did you answer: "I think I did; yes, sir." Did you say that? A. I think so; yes, sir.

Q. Were you asked: "Q. When?" and did you answer, "I don't know; that is a good while ago"—did you say that? A. If that is there, I said it.

Q. Yes, it is here. Then you were asked: "Q. About how long?" and did you answer: "Well, I should say six or seven years ago"? A. What do you mean, from the time that I got him appointed?

Q. No, I am asking you for any meaning at all.

MR. MacFARLANE: That is repetition. Go down to the question "Now when did Miss Clark come in?"

MR. CARR: That is duplication.

MR. STEVENS: Yes. (Continuing reading.)

Q. Now, when did Miss Clark come in? A. August, I think the first day of August.

Q. What year? A. It would be 1903, ain't it?

Q. Who were employed in the office at that time? A. The same.

Q. The same? A. Yes, sir.

Q. And who continued to be employed in the office as long as you remained postmaster, until April 1st, 1904? A. The same parties.

Q. As those employed there now? A. Well, now, I don't suppose——

Q. (interrupting) Landers, Easton, Sessions and Caldwell? A. Yes, sir.

Q. They have been employed continuously since Miss Clark was relieved from duty? A. Yes, sir.

Q. And no others? A. Well, Miss Clark——

Q. As a substitute she has been employed? A. Yes.

Q. I mean regularly employed? A. That is all there were or that is all there are.

Q. Mr. Taylor, what were Sessions' duties? A. He was my deputy postmaster.

Q. General oversight of the office? A. Yes, sir.

Q. What were the other men's duties? A. Other clerks?

Q. Yes. A. Well, one was classed as a stamper, another one as a distributor, I believe a stamp clerk, I ain't certain. I think if you have any of the——

Q. (interrupting) Who attended to the money order business after Miss Clark went out? A. I suppose Mr. Sessions did.

Q. Were you postmaster there, don't you know? A. After Miss Clark went out?

Q. Yes. A. I didn't quite understand your question. Mr. Sessions did.

Q. Mr. Taylor, while Miss Clark was employed in the office didn't all the clerks take part more or less in attending to money orders? A. Sir?

Q. While Miss Clark was employed in the office, didn't all the clerks take part more or less to money orders? A. While she was out they would have to issue them, some one would. I issued some myself and paid them.

Q. Now, Miss Clark performed other duties while she was in the office, did she not? A. I presume so.



Q. What else did she do besides issue money orders? A. She made out money order reports.

Q. Well, there was no particular regular division of duties among those clerks, was there? A. Yes, she was the money order clerk.

Q. Didn't the clerks do whatever they found to their hands to do from time to time? A. Not in the money order business.

Q. In the other matters, did they? A. Why, certainly.

Q. Now, under the postal regulations, a clerk is obliged to do whatever he is directed to do by the postmaster, is he not? A. Yes, sir.

Q. What did you direct Ball to do? A. Well, I didn't direct him to do anything.

Q. Have you the note with you that Mr. Ball gave you October 1st, 1903? A. Yes, sir.

Q. Let me see it? A. Yes, sir.

MR. CARR: Put in "Handing note to Mr. Stevens," so it will be seen he did produce the note.

Q. Now, have you produced all the books, papers and writings of every kind that you have brought here to Albany on the subpoena served upon you? A. Everything but what you told me——

Q. (interrupting) Have you produced everything you brought with you. A. Yes, sir, I have.

By MR. COMAN:

Q. Mr. Taylor, have you put those papers in your pocket, those long notices from the government? A. They are here, you have them here now.

Q. You are sure you haven't put them in your pocket? A. Which papers do you mean?

MR. CARR: They had them, Mr. Coman produced them.

MR. MACFARLANE: Yes; "Mr. Coman; here they are, Mr. Taylor."

MR. STEVENS (continuing) :

Q. Mr. Taylor, just a question or two more. You didn't pay Maurice Hooker by check? A. No, sir.

Q. What did you pay him, money? A. Yes, sir.

Q. Have you got a record of how much you paid him? A. No, I haven't, more than I paid him all his salary, less what I paid to the charwoman, the woman that done the work.

Q. Have you got any account of how much you paid the scrub woman? A. No, sir, at the end—every time she cleaned I paid.

Q. You have no record of it, you say? A. No, sir.

Q. That answers the question. A. I was going to tell you why I didn't have it.

Q. Did you keep a record of it during the month? A. Yes, sir.

Q. On a little slip? A. Yes, sir.

Q. And at the end of the quarter, or something, whatever it was— A. (interrupting) End of the month, I figured that up and took it out of his salary, and the balance of his salary I put in an envelope and gave it to him.

Q. Did you destroy those slips? A. I did, because they were of no account.

Q. So there is no record in existence now showing just how much you paid the scrubwoman during the time Maurice Hooker was on the payroll? A. No, I haven't any.

Q. You can state how much it was? A. I must have paid eight to twelve dollars, I think—

Q. (interrupting) You think you must, but do you know anything about it? But we went over that this morning; there isn't any such thing? A. No.

Q. Did you live in Fredonia at the time free delivery was instituted? A. Yes, sir.

Q. Do you remember anything about it? A. Not anything.

The cross-examination of Mr. Taylor, beginning on page 893, was then read, Mr. Carr reading the questions and Judge Goodrich the answers, as follows:

Q. Mr. Taylor, how old are you? A. I will be seventy-one the 27th day of October coming.

Q. You have now been on the witness stand here for four or five hours? A. Well, I guess it is.

Q. You have lived in Fredonia most of your life? A. I have lived there since '67.

Q. Have you known Judge Hooker? A. Yes, sir.

Q. Very well? A. Very well, indeed.

Q. Have you known Mr. Stevens up in Jamestown? A. Yes, sir. I have known him before he came to Chautauqua County.

Q. You have a general knowledge of the people, statesmen and politicians up there, every one of them? A. Yes, sir.

Q. Mr. Taylor, you say that you were appointed Postmaster at what time? A. November 9th.

Q. 1899? A. I was postmaster before that.

Q. You were postmaster when? A. I was postmaster under General Grant.

Q. Well, that may be interesting, but—— A. I was appointed November 9, 1899.

Q. That was your second term? A. Yes, sir.

Q. Who was the President under whom you received your appointment? A. William McKinley.

Q. And you remained in office under that Presidential appointment until what time? A. The first day of April, 1904.

Q. You were reappointed, were you not? A. No, sir.

Q. I mean reappointed, were you not appointed first to fill a vacancy? A. Oh, yes.

Q. During the vacation of Congress or the Senate? A. I was appointed in December.

Q. And confirmed by the Senate? A. And confirmed by any——

Q. (interrupting). And took office and remained in office until the first—— A. (interrupting). The 1st of April, 1904.

Q. When you qualified as postmaster did you give a bond? A. Yes, sir.

Q. What was the size of your bond? A. I think it was \$12,000.

Q. Shortly after you were appointed postmaster you made application to have Katherine Clark appointed into your office?

A. Yes, sir.

Q. What position did you want her to fill? A. Money order clerk.

Q. How much money did she have to handle? A. Well, somewhere around eighty or ninety thousand dollars a year.

Q. You were responsible for that cash, were you? A. Yes, sir.

Q. Did you know Kate Clark well? A. Yes, sir.

Q. Was she an intelligent woman? A. Yes, sir.

Q. Honest? A. Yes, sir.

Q. You believed you could trust her, did you? A. I did, implicitly.

Q. And did you want her to handle the cash? A. I did.

Q. Was that the reason you asked for her appointment? A. Yes, sir.

Q. Now, during the three years she occupied the office were her accounts from time to time inspected by the postoffice inspectors? A. Yes, sir.

Q. How often? A. Well, sometimes once a year, sometimes twice.

Q. That would be unexpectedly? A. Always unexpectedly.

Q. They took possession of the cash at once, would they? A. Yes, sir.

Q. Took possession of the bank books? A. Yes, sir.

Q. And checked them up? A. Yes, sir.

Q. During the time Kate Clark had charge of your office did the inspector ever report there was a penny out of the way, didn't balance. Was there ever? A. No, sir.

Q. From time to time did the inspector look over your account books and see how much salaries you were paying, what wages you were paying? A. Yes, sir, they did.

Q. See what your disbursements were? A. Yes, sir.

Q. And did they ever complain to you that you were holding any moneys, putting them in your own pocket, that properly be-

longed to those that were employed by the Government? A. No, sir.

Q. Did you ever? A. No, sir.

Q. And did all the money that belonged to, all the salaries attached to the various offices, did each one of the people that filled these offices receive in full, during your term, the full amount of the money? A. They did, sir, every penny.

Q. How large a village is Fredonia? A. I think we have about five thousand now, probably a little over.

Q. At that time about how many? A. Well, probably was a little over four thousand.

Q. What time in the morning did your postoffice open? A. Seven o'clock.

Q. What time did it close? A. Half past eight at night.

Q. So you were open thirteen and a half hours? A. Yes, sir.

Q. Did you know anything about a desire of the Government during that period of time to put the office on an eight-hour basis? A. Yes, they used to send me a blank to fill out and stated they wanted to get everything on an eight-hour basis, as I understood.

Q. So that during the time you were occupying the position your office was open thirteen and a half hours a day and it was conducted by the number of clerks you have detailed here? A. Yes, sir.

Q. Did you make some request of Judge Hooker to assist you in getting Kate Clark appointed? A. I think I did.

Q. Promise him any money if he would get—— A. (interrupting) No, sir.

Q. Or any other reward? A. No, sir.

Q. Did he ever receive any money or any other reward? A. No, sir.

Q. He did it at your request for the purpose of having a person appointed that you desired appointed to handle the cash for which you were responsible? A. Yes, sir.

Q. Do you remember now that Miss Kate Clark had been appointed from the Fort Plain office? A. Did I know it?

Q. Do you remember now that fact? A. I think so.

Q. Were you or were you not informed that she was to be transferred to your office? A. Yes, that was the understanding, she was to be transferred to my office.

Q. How long a time had elapsed after you heard that she had been appointed to the Fort Plain office before she was actually transferred to the Fredonia office? A. I think she was transferred—I don't know the date of the transfer, but it seems to me she went to work the second or third day of May.

Q. Did you or did you not understand there was a salary attached to her position when she was appointed by the Government? A. At Fort Plain?

Q. Yes. I supposed there was.

Q. Did you or did you not make a request in reference to having her salary checks sent on to her? A. I did.

Q. Did you or did you not believe that she might be entitled to a salary? A. Well, I supposed she was entitled to it.

Q. Was Judge Hooker to receive any portion of that salary check? A. No, sir.

Q. Was there any other person than Kate Clark to receive it? A. No, sir.

Q. Did she perform, or did she not perform, her duties faithfully until the time of her removal? A. Yes, sir, she did, perfectly so.

Q. Were you removed by President Roosevelt from office or did you serve out your term? A. I served out my term.

Q. They didn't proceed against you? A. No, sir.

Q. On the theory that you had been doing some corrupt things to remove you from office? A. No, sir.

Q. After the Bristow report, did you remain in office until the expiration of your term? A. Yes, sir, and probably a couple of months more, I think.

Q. You say you found Frank Ball's name upon the pay roll?  
A. Yes, sir.

Q. Did you make any inquiry as to why he was appointed? A.  
I did not.

Q. Do you talk with anybody in reference to it at all? A. No.

Q. You found they were paying three dollars a month for scrubbing and taking care of the cleanliness of the building? A.  
When I went in there?

Q. When you went in there? A. Somewhere in the neighborhood of that. Mr. Moore told me what—he said I could get a little, small allowance.

Q. You continued on that old routine? A. Yes, sir.

Q. Three dollars a month? A. Yes, sir.

Q. You continued— A. (interrupting) A quarter.

Q. I mean three dollars a quarter? A. Yes, sir.

Q. You continued on that old routine, paying the employees that the Government had appointed? A. I did.

Q. You say you asked no questions about Mr. Ball? A. I did not.

Q. You asked questions why they only allowed three dollars for taking care of the postoffice a quarter, or not five dollars on the average? A. No, sir.

Q. Do you recall whether this was the first communication of this kind that you received from Washington? A. I think it was from the date of it.

MR. CARR: That refers to some of these papers that have been put in.

Q. And did you, or did you not, understand from that that there had been an allowance of three dollars a quarter for taking care of this postoffice? A. Yes.

Q. For scrubbing and cleaning? A. Yes, sir.

Q. Now, how large windows did you have in your office, compare them with those windows we see here? A. Very large windows, with one pane of glass in a window; they are very large windows; of course, they are not as large as these.

Q. About how many feet high would they be? A. Why, so high we had to get up on a step ladder to clean them or they generally stand on the window casing.

Q. Did you have a postoffice with glass in front of the boxes? A. Yes, sir.

Q. How many postoffice boxes? A. Well, I can't tell, several hundred of them.

Q. About how many people came into the postoffice in the course of the day? A. A great many, I don't know.

Q. The streets are not paved up there? A. Not all of them.

Q. Very few of them? A. Very few of them; there are only two streets paved in town.

Q. About how much floor space was there in the postoffice? A. Well, I can't state the number of feet; it has been measured up there, I really can't—it is quite a large space, in behind you mean, in behind the boxes where they do the work.

Q. And your own private office? A. Yes.

Q. You found you were being allowed about three cents a day for cleanliness? A. Yes.

Q. About three dollars a quarter, pretty nearly one hundred days? A. Yes.

Q. You say this continued until the time came when you thought you were entitled to a janitor? A. I did, yes, sir.

Q. Now, did I understand you correctly in saying that you understood the smallest allowance the Government made for a janitor was four hundred dollars and the highest was six hundred dollars? A. I think that is in the rules and regulations; I think so.

Q. So when you came to ask for a janitor or laborer you asked that he be appointed at the smallest wages that the Government paid? A. Yes, sir, I did.

Q. That was the time you asked for the appointment of Mr. Maurice Hooker? A. Yes, sir.

Q. Did you or did you not believe at that time you ought to have somebody to do that kind of work as a regular employe? A. I thought we ought to have somebody, yes.



Q. At the time you asked for the appointment of Mr. Maurice Hooker did, or did you not, intend to have him perform the work?

A. I intended to have him do it.

Q. Did Judge Hooker ever ask you not to have him do the work? A. No, sir.

Q. Could you think of any reason why Judge Hooker wouldn't have wanted him to do the work? You say Judge Hooker never did ask you not to have him do work? A. No, sir.

Q. Did you know that he knew that he was not performing any work? A. I don't.

Q. Did he do anything in connection with getting his appointment excepting at your request write a letter? A. That is all.

Q. Did you pay Judge Hooker any of the money that was awarded by the Government to Maurice Hooker? A. No, sir.

Q. Maurice Hooker was a young man whose father you had known? A. Yes, sir.

Q. You had known him? A. Yes, sir.

Q. From infancy? A. No, sir, not infancy.

Q. Do you remember when he came to Fredonia to go to school, that his little sister came with him? A. I do, yes, sir.

Q. About how old a girl was she? A. I really don't know; I should think seventeen or eighteen, somewhere around that.

Q. She was a couple of years younger than he, wasn't she, or don't you know? A. I don't know.

Q. The brother and sister lived in the same place on Union Street?

Q. How about that, do you remember where they lived? Let us put it that way? A. They lived on Newton Street.

Q. When you came to be called upon by the Governor to pay certain moneys back, something like twenty-five or six or seven hundred dollars, who talked with you first about it, what public official, what postoffice official? A. Mr. Cochrane.

Q. Who was Mr. Cochrane? A. He is a postoffice inspector that was detailed in our county there for a while.

Q. What did he say to you about it? A. Well, after he had got me all checked up and found everything all right, then

he wanted to know Ball and Hooker's business. I said to him, "you know as much about it as I do. You have seen my reports at Washington, you have probably had access to them, and I have paid them."

Q. When you say, "I have paid them," you mean you have paid them money by the month? A. Yes, certainly. Well, he said I hadn't ought to have done it and he told me—I can't just state the words, but he said that I would have to pay it back. Well, I remarked, it was pretty hard for me to pay it back. Well, he said, "You will have to pay it back or you will be removed, and if you can't pay it, they will sue our bondsmen and they will have to pay it." I said, "Mr. Cochrane, I am a candidate for reappointment; there is nothing against my reputation or character; you have inspected this office from time to time, and never saw anything wrong with me, but I am a candidate for reappointment, and if this would spoil my appointment, why, I will have to pay it back," and he told me it would. I think the upshot of it was he said, "If you do pay it back, you will undoubtedly be reappointed."

Q. Now, do you remember going to see Judge Hooker about that time in reference to paying it back, or a little later? A. Probably it was later some time.

Q. What did you say to the Judge in reference to your desire to be reappointed? A. Why, I told him I wanted to be reappointed.

Q. Did or did you not tell him what the postoffice inspector had told you? A. Yes, sir.

Q. Tell us as near as you can what you told the Judge on that subject? A. Well, I told him that he had been there and told me I would have to pay that money back and that if I paid it back, I undoubtedly would be reappointed, or words to that effect.

Q. What did the Judge say to you after you made that statement? A. He told me to do just as I thought best.

Q. Is that the whole of the transaction? A. That is all of the transaction that I had with him.

Q. Did you ask Judge Hooker to give you any money? A. No, sir.

Q. Did Judge Hooker give you any money? A. No, sir.

Q. Did he become responsible for any money you paid back to the government? A. No, sir.

Q. Did Mrs. Hooker become responsible? A. No, sir.

Q. Did you ask her for any money? A. No, sir.

Q. Was there anything else said to the Judge, excepting that the post office inspector had been there and inspected your books, and had told you that if you didn't pay that back you would be sued and if you did pay it back, you undoubtedly would be reappointed? A. That is what he told me.

Q. And the judge made the reply you speak of? A. Yes, sir.

Q. You talked with Frank Ball, did you, with reference to this money? A. Yes, sir.

Q. Now tell us again what it was that Frank Ball said when you spoke to him about having to pay back the money that you had paid him? A. Well, he made the remark that if he had to pay any of it back he wanted to pay it all back.

Q. What did he say about raising some money, if anything, to pay back the amount he had got to pay for Arthur Moore? A. Why, he wanted that I should pay that back and that he would give me his note for it.

Q. Did he give you his note? A. He did.

Q. That is the twenty-five hundred dollars? A. Yes, sir, that is the note.

Q. Has he paid any portion of it? A. Yes, sir.

Q. When did he pay and how much did he pay? A. \$650 the first of November.

Q. This year? A. Yes, sir.

Q. I mean 1904? A. Yes, sir.

Q. Five hundred dollars principal and one hundred and fifty dollars interest? A. Yes.

Q. You had known Frank Ball for how many years? A. I have known him from—I have always known him, I guess, he was born there.

Q. That payment of \$650 is endorsed on your note? A. Yes, sir.

Q. Was endorsed at the time you received it? A. Right at the time, in my house.

Q. Did you receive it from Frank Ball? A. I did.

Q. Did or did you not receive any of it from Judge Hooker or Mrs. Hooker? A. I didn't receive any of it from them.

Q.. You say you have known Frank Ball from childhood? A. I think so; I think he was born in Fredonia.

Q. Did or did you not know he owned land in Fredonia? A. He told me he owned five acres of grapes, or four and a half.

Q. And what is grape land up there worth? A. It is worth from three to five hundred dollars an acre.

Q. Did or did you not believe that Frank Ball would pay his note if he gave it to you? A. I believed he would pay it.

Q. Did you ask him for security, did you ask him to mortgage the property? A. I did ask him to give me a mortgage on that and he said he would.

Q. Have you asked him for it since? A. Yes, and he said he would give it to me any time, but I haven't never taken it.

Q. He hasn't disposed of the property? A. No.

Q. You never heard of any judgment being against him? A. No, sir, I never did.

Q. And do you regard that note as a perfectly good note? A. I do, yes, sir.

Q. You were asked in reference to giving some reason why this \$600 was paid before you paid the balance that was drawn against you? A. Yes, sir.

Q. Did I understand you correctly that was done because Mr. Ball was desirous of having the six hundred dollars paid before suit was brought? A. That is what Mr. Barnard told me, that that had got to be paid, that he couldn't hold that off a month.

Q. You actually paid on the second of October, you paid the amount that was coming from you? A. I paid it on the 28th of September, I think.

Q. Were you ever called to Washington? A. No, sir.

Q. To show cause why you should not be removed from office?  
A. No, sir.

Q. After you had paid the money, was there ever any controversy between the government and yourself? A. No, not a word.

Q. They allowed you to remain in office as a public official? A. Yes, sir.

Q. Until the expiration of your term of office? A. Yes, sir, and from November to April.

Q. Did you ask Judge Hooker to give you or to advance to you any moneys that you had paid Maurice Hooker? A. No, sir.

Q. Or did you ask Mrs. Hooker? A. No, sir.

Q. To help you pay back the government any moneys you had paid Morris Hooker? A. No, sir.

Q. Or either of them to pay you any money? A. No, sir.

Q. Or make any promise to you? A. No, sir.

Q. What was the rule of the post office department in reference to allowing a man who was appointed a laborer to do any clerical work? A. He couldn't do any.

Q. What was the rule of the department as to allowing men who were appointed in the classified service doing laborer work?  
A. Well, I don't know just as I understand.

Q. Well, a laborer couldn't do clerical work; and could a clerk do laborer work? A. No, sir, that is the way I understand it.

Q. That is your understanding of it? A. That is my understanding of it.

Q. Now, will you look at your letter of January 23d, 1902, Exhibit 6 (showing it to witness), had you received some request— A. (interrupting) Which do you mean?

Q. I will read it: "Inclosed please find statement of clerk's time for the week ending January 18th, as you requested, and I trust that it will prove satisfactory. Very respectfully, Melvin H. Taylor, Postmaster." It was addressed to Hon. W. M. Johnson, First Assistant Postmaster General, Washington, D. C. Had you received a letter from the post office department asking for a schedule of time that the men were employed in your office?  
A. I presume so, yes, sir.

Q. And do you or do you not know who made it out? A. I don't know.

Q. But in response to that did you send this letter? A. Yes, sir.

Q. It wasn't your own voluntary motion? A. No, sir.

Q. You didn't get this up and send it down there until it had been requested? A. No, sir.

Q. Then you say it was gotten up by somebody in the office, you don't know who got it up? A. I don't know who filled it out.

Q. Now, in reference to the other schedule, you sent two, did you, don't you recollect? A. I don't remember; those things came to the office once or twice a year, I guess.

Q. Once or twice a year? A. I think so, it is a sort of a circular letter.

Q. Is it true that whenever you did send them it was sent in response to some inquiry from the department, from some letter from the department? A. Certainly, they wrote, sent me that circular there.

Q. Was it in any case voluntary, of your own motion? A. No, sir, not at all.

Q. Always in response to some inquiry? A. Yes, sir.

Q. Now, speaking generally of these reports, do you know who got up any of them, these schedules of time, the time on payroll, do you know who made up any of them? A. I guess my deputy made most of them.

Q. You think it was made up by your deputy? A. Yes.

Q. You have no recollection of making up any yourself? A. No.

Q. In reference to the checks that were put in evidence showing that you paid by check twenty-four or twenty-five or twenty-six dollars a month to Kate Clark, did you or did you not pay her the full amount of her salary each month? A. Oh, certainly the quarterly—the payroll would show the whole of it, \$50.00.

Q. Did you pay in accordance with what the payroll would show? A. Yes.

Q. Did you keep any of it out yourself? A. No, not a dollar. It was paid to her. She told me she had got to have some money to live on during the month and asked me to pay her that way and I did.

Q. And do you know of any reason why you could not pay her money out of the money in the office just as well as you could pay her any money that was deposited in the bank? A. Why, it was all my money.

Q. You are responsible for all of it? A. I am responsible for every dollar.

Q. Are you under any obligation to keep all your money in the bank? A. The postmaster in my office is entitled to his salary, so the inspector told me, every night.

Q. Are his employes the same way? A. I pay the clerks in the middle of the month.

Q. Would from time to time advance some money? A. I have often loaned them a little money, that I would take out of my own pocket.

Q. Would you from time to time advance a person at the middle of the month a portion of their salary? A. I paid them half of it every month, the clerks.

Q. Sometimes in cash and sometimes by check? A. Yes, sir.

RE-DIRECT EXAMINATIONS (questions by Mr. Stevens, answers read by Mr. Lawyer):

Q. At the time Miss Clark was appointed to the postoffice who was Congressman in your district? A. I don't know whether they had any then or not.

Q. Wasn't Mr. E. V. Vreeland elected in November, 1899, before you became postmaster, and didn't he take office at once to fill the vacancy caused by the resignation—— A. (interrupting) I have forgotten; I don't know.

Q. Wasn't Mr. E. V. Vreeland Congressman from December, 1899, from that district? A. He may have been; I don't remember.

Q. You were Town Committeeman at that time, weren't you?  
A. Town Committeeman?

Q. Yes. A. I was Town Committeeman at some time.

Q. Now, when Maurice Hooker was appointed, who was Congressman? A. I don't know who.

Q. You don't know who was Congressman? A. Probably it was Mr. Vreeland for all I know.

Q. Did you refer any request to Mr. Vreeland for either of these appointments to be made? A. I didn't, no, sir.

Q. When you went into office as postmaster you had to give a bond, you say? A. Yes.

Q. Who were your sureties on your bond? A. Why, I had some Surety Company in Buffalo.

Q. Surety Company? A. When I first went into office, yes.

Q. That was the first one; then you gave another one afterwards, didn't you? A. Yes, sir.

Q. Who was on that bond as surety? A. Frederick R. Greene, John S. Lambert and Warren B. Hooker.

Q. Did you get another bond after that? A. No, sir.

Q. That was the bond that remained? A. Yes, sir.

Q. Now when did you give that bond which Greene and Lambert and Hooker were on? A. I gave it after—I had to pay for a year in the Surety Company; it cost me \$100 a year and I didn't propose to pay that.

Q. Now Miss Clark ceased to be the money order clerk in your office about the first of August, if I remember correctly, 1903? A. I think so, yes, sir.

Q. Were the accounts of the money order clerk a penny out of the way after that, while you remained postmaster? A. Not that I know of.

Q. Just as correct after she left as while she was there, weren't they? A. I presume so.

Q. Now you stated that there was an understanding that Miss Clark was to be transferred to Fredonia from Fort Plain; with whom was that understanding had? A. I didn't—I don't think there was any understanding.



Q. Why, didn't you state that in answer to Mr. Hoyt's question? A. Yes, I guess so.

Q. With whom was that understanding had? A. Well, sir, I don't know.

Q. Have you any idea with whom it was had? A. I expected to have her transferred.

Q. You said there was an understanding with some one; now, with whom did you have this understanding? A. Well, sir, I didn't know; I didn't have any understanding with any one as I know of.

MR. CARR: I think you ought to read what Mr. Hoyt and Mr. Fish said.

MR. STEVENS: I do not think so, if you wish to you may read it.

Q. Now, after a demand was made on you by the department for the money you had paid Maurice Hooker, did you go to Maurice Hooker and ask it back? A. Did I?

Q. Yes. A. No, sir.

Q. Did you ever notify Maurice of the fact? A. I don't think I did.

Q. Never wrote to him about it? A. No.

Q. Did you go to his father about it? A. No, sir.

Q. Never asked it back from anybody, did you? A. No, sir, I knew he couldn't pay it if I did.

Q. He was an infant, wasn't he? A. Well, he was, I guess, under age——

Q. Now, Mr. Taylor, do you mean to say that Mr. Maurice Hooker couldn't pay it back? A. Well, I don't——

Q. Do you mean to say that a strong, healthy young man twenty years old, up there in Chautauqua or Cattaraugus county couldn't go to work and earn \$300 or \$400 and pay it back?

THE WITNESS: He couldn't have paid it back at the time I had to pay it.

Q. Have you ever asked him to pay back any of it? A. I don't know that I have.

(Stenographer read previous testimony of Mr. Taylor, as to transfer of Miss Clark.)

By MR. STEVENS:

Q. Now, you have heard that read, Mr. Taylor, that there was an understanding that she was to be transferred to your office; now with whom was that understanding had? A. Well, probably I asked Judge Hooker to help me to have her transferred.

Q. Then, whatever understanding there was was with Judge Hooker, was it? A. Well, I don't know.

Q. Do you know of any other person that you had any other understanding with on the subject? A. I don't know that I do.

Q. Now you stated, that you supposed that Katherine Clark was entitled to some salary at Fort Plain, did you not, in response to Mr. Hoyt's question? A. I guess I did.

Q. Did you suppose that she was entitled to any salary without ever having been there at all to perform any service? A. Well, I had understood that clerks had had a salary.

Q. Under similar circumstances? A. Well, I don't know what.

Q. Did you? A. Yes.

Q. Whom did you understand that from? A. Well, sir, I don't know.

Q. Then you said that you made a request that her salary be paid: of whom did you make that request? A. I guess I said that if she had anything due her there,—think I——

Q. Well, of whom did you make that request? A. Well, I presume I asked Judge Hooker if she had anything due her there and ask and see if she had anything.

Q. Where did you ever see any regulation of the department that clerks were not permitted to do laborer's work? A. Well, I think it is in some place in the rules and regulations, I can't tell you where.

Q. Your clerks did do laborer's work, didn't they? A. Yes, because they had to.

Q. Well, you required them to do it, didn't you? A. Why, when I—they never done any scubbing.

Q. Well, they did sweeping, didn't they? A. Yes, sir.

Q. Took turns at it? A. Yes, sir, I done sweeping myself.

Q. Both before and after Maurice Hooker was appointed? A. Well, I don't get the——

Q. Well, never mind. Now did you ever see any regulation that clerks were allowed to perform laborer's services? A. I don't know that I have.

Q. Mr. Taylor, can you tell how it happens that every month for 14 months Miss Clark happened to ask you and to get just \$25 a month from you by these little money advances? A. Just as I have told you.

Q. Well, the checks from month to month amounted to just about \$25 every month, didn't they? A. Somewheres around there, I guess so.

Q. Now, does it strike your mind as a little extraordinary that under the small advances during the month that for 14 months is should happen to be just \$25 a month that she got? A. Well, now, I can't explain that to you; when she was here she would have explained it to you if you had have asked for it.

Q. Now, you spoke about these allowances for cleaning; every quarter you sent in a request to the department for the amount of allowance you wanted for that quarter, did you not?

Q. Now, you did send in requests every quarter for an allowance for the next quarter, didn't you? A. I guess so.

Q. So you were the man who notified the department how much you would need, weren't you? A. Probably.

Q. And they never refused any request that you made in that regard, did they? A. I think not.

Q. They never told you that they would hold you down to any three dollars a quarter, did they? A. It wouldn't clean the office one-half of it.

Q. No, but they put in all you asked for, every time, didn't they? A. I presume so, yes.

KNOW .

Q. Now, Mr. Hoyt asked you how many people came into the post office daily; did you understand by that, how many came in behind the boxes in the private clerk's room? A. No, there is nobody allowed there.

Q. Nobody allowed there? A. No.

Q. The people that came into the office came out there in front, did they not? A. Well, the whole force went through there, the rural carriers and all.

Q. Yes, but I mean the public coming in, they came in the front? A. Why, certainly.

Q. Now, what part of the office was kept clean by the janitor of the building, was it not? A. A portion of it.

Q. The village owned the building, didn't it? A. Yes, sir.

Q. When this demand was made on you for the money from Washington, did you confer with Mr. Lambert, one of your bondsmen on the subject? A. No, sir.

Q. He lived in the village? A. Yes, sir.

Q. And this John S. Lambert, was Judge John S. Lambert of the Supreme Court? A. Yes, sir.

Q. Did you go to see Mr. Green on the subject? A. No, sir.

Q. He was your other bondsman besides Judge Hooker? A. Yes, sir.

Q. And so the only one of your bondsmen that you saw was Judge Hooker? A. There was nothing said about my bondsmen.

Q. Well, I say the only one of your bondsmen that you did confer with on the subject, was that right? A. That is right.

Q. Just one question: Did you ever see the report that Mr. Cochrane made to the department after visiting you and talking about these matters of Maurice Hooker and—— A. Did I ever see it?

Q. Yes. A. No, sir.

Q. You don't know what the report contained? A. I do not.

RE-CROSS EXAMINATION by MR. HOYT:

Q. The bondsmen on your bond were Mr. Green, the cashier of the bank? A. Yes, sir.

Q. Mr. Warren B. Hooker, a Justice of the Supreme Court? A. Yes, sir.

Q. And Mr. John S. Lambert, a Justice of the Supreme Court? A. Yes, sir.

Q. They had known you, all of them had known you well? A. Very well.

Q. And all lived in Fredonia? A. All lived in Fredonia.

Q. And your consultation with Judge Hooker as to whether it would be better for you to pay it back, you have told all the story about that? A. I have told it all, everything.

Q. And the reason why you asked it? A. Yes, sir.

Q. It is simply on the question whether you would get a re-appointment? A. That is all.

Q. That is all you asked him for? A. Yes, sir.

Q. The only reason you conferred with him about it? A. Yes, sir.

Q. A political question? A. Yes, sir.

By MR. CAHN:

Q. Mr. Witness, when you went to see Judge Hooker about paying this money back and you told him, as you testified here that this post office inspector had stated to you that you had to pay that money back, didn't he ask you why it was necessary to pay that money back? A. I don't think he did.

Q. Did he know why it was necessary to pay that money back? A. Why, probably, I told him that they had made a—the inspector told me that it would have to be paid back.

Q. Why wasn't the money that was paid to Mr. Sessions to be paid back? A. Mr. Sessions, never was any money paid me.

Q. Or Mr. Caldwell? A. They never—

Q. Why did they not ask for that money to be paid back? A. Money that I paid Mr. Sessions?

Q. Yes. A. Why, they never asked me for any money that I paid him.

Q. Do you know why not? A. No, I don't.

By MR. FISH:

Q. He wants to know the reason why they asked you to pay back the money you had paid Hooker and still they didn't ask you to pay back the money you had paid Sessions? A. I don't know.

By MR. CAHN:

Q. Don't you know at all why? A. I suppose because they were there and earning it, that is all the reason I know.

Q. And the others you were asked to pay back weren't there? A. Yes, sir.

Q. Didn't you mention to Judge Hooker that they weren't there? A. No, sir.

Q. He didn't ask you why they wanted the pay back? A. No, sir.

Q. He took that as a matter of course? A. I presume so.

Q. Now, you had known, you say, Maurice Hooker for a great many years? A. Oh, not a great many years.

Q. How long had you known him? A. I had known him a few years.

Q. What do you mean by a few years? A. I mean five or six years.

Q. And he was a young man about 18 years of age? A. I presume so, but I never did know his real age.

Q. When you selected him for recommendation as laborer to Fredonia, was he living at Fredonia at that time? A. I think he was.

Q. He was already living there, then? A. I think so, I am not certain.

Q. Now, why did you pick this boy, Maurice Hooker? A. I think I stated that to Mr. —

Q. Why did you select him from all the others in that village for appointment, do you know? A. Simply because I thought he was a poor boy and I thought he could do that work and earn some money to pay his schooling.

Q. He was the only poor boy in Fredonia, was he? A. No, sir.

Q. Why did you pick Maurice Hooker out? A. I can't tell you why I picked him.

Q. Then, after having thus selected Maurice Hooker, as appointee, you went to his uncle and asked his uncle to recommend him, is that the idea? A. No, I didn't ask him to recommend him; I asked him to help me get him appointed.

Q. Asked him to get Maurice Hooker appointed? A. To help me.

Q. You don't know of any better reason why you picked that boy out that you have stated here? A. No, sir, I don't.

Q. Now, this payment that Mr. Ball made to you on account of this note \$650, did he pay you by check? A. No, sir.

Q. By cash? A. Yes, sir.

Q. Came in and gave you \$650 in cash? A. He did, sir, in my own house.

Q. Do you know what Katherine Clark did with these \$25 checks, that you gave her from time to time? A. I suppose she got them cashed.

Q. You didn't get them cashed for her? A. Certainly not.

Q. When those checks came back from the bank did you ever notice what she had done with them; when the vouchers came back did you ever notice what she had done with those checks? A. No, sir.

Q. Never looked to see, did you? A. No, sir.

Q. Now, you also stated that the money which the various clerks desired advanced from month to month, you used to advance money to your clerks, too, if they needed it? A. Yes, sir.

Q. You stated that you advanced that out of your own pocket? A. Oh, no, you don't understand me; there was an inspector there one time and the clerks wanted some money in the middle of the month, the same as the carriers, and I asked him if I could pay my clerks during the middle of the month, and he said I could, half or a portion of it; I didn't always quite pay them half.

Q. What do you mean when you say you advanced that out of your own pocket? A. They weren't advanced, I——

Q. Well, substitute any word that you like, say "paid" it out of your own pocket? A. To whom?

Q. To these clerks you paid it out of your pocket? A. Oh, no, I didn't state that I paid any money to the clerks, only Miss Clark, I advanced her some, I paid her cash instead of giving her a check, as the rest of them, because she wanted it, she asked it put that way.

Q. Didn't you say that there were other clerks there from time to time that needed money during the month that you used to pay? A. Oh, if there was any clerk there, I think I have loaned some of them a very little, but it is a trifle, nothing to speak of.

Q. That was out of your own pocket, wasn't it? A. Why if they wanted some little advance in the middle of the month, I always paid it.

Q. Now, will you answer my question, wasn't that money that you gave those clerks out of your own pocket? A. Why, if a clerk would ask me for one dollar I would take it out of my own pocket and hand it to him, and he would pay it back to me when I paid him.

Q. But in the case of Miss Clark it was paid out of the post-office receipts, is that right? A. Well, I think that during the —when I paid the rest of them she would have some, too, and I would take the money out of my cash account and pay it to her.

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By MR. FISH:

Q. And carry the ticket as cash? A. Carry the ticket as cash, that is it exactly. That is it; there was nothing irregular about it as I can see.

By MR. WEMPLE:

Q. Mr. Taylor, did you carry on this correspondence personally with the Department in Washington, or did Mr. Sessions do that for you? A. Well, we never had a great deal of correspondence with them.



Q. Well, this correspondence that is referred to in the record here, to which your name is attached? A. Oh, yes, I suppose he—

Q. Who wrote the letters? A. If there was a typewritten letter I presume Miss Clark wrote it.

Q. You had a typewriting machine there? A. Yes, sir, for making out the money order reports.

Q. Did you dictate the letters? A. No, sir.

Q. Who did? A. I don't know.

Q. Who dictated the report which has been referred to here? A. Well, sir, I think I stated that I don't know who did it, I signed that report.

Q. Those reports were only sent in upon request from the Departments?

By MR. FISH:

Q. Time reports he is referring to? A. Yes.

By MR. CUNNINGHAM:

Q. For that amount of money which you paid to the Department as having been paid to Mr. Ball, Mr. Ball has obligated himself to repay to you by means of this note? A. Yes, he has.

Q. Has any one on behalf of Maurice Hooker, or because of the amount you have paid Maurice Hooker, ever promised or repaid to you the sum that you paid? A. No, sir, and I will tell you the reason I paid ~~his~~. I paid it because the inspector said if I didn't pay it all I would be removed, and I had rather pay my money and take my chances of getting it, or may be lose my chance of reappointment. I expected to be reappointed.

Q. No one has promised or has repaid any part of that to you? A. No, sir, not a dollar.

Q. Did you testify in answer to Mr. Stevens that you weren't sure or you were sure which, that Maurice Hooker was attending school in Fredonia at the time you applied for his appointment? A. I think he was going to school there.

Q. Can you swear to it positively? A. I can't, I can't swear to it positively.

Q. Then if you can't swear to that positively, you can't swear positively either to the other fact which is necessarily based on that; that is, that you appointed him because he was a poor fellow in Fredonia who was going to school? A. He may have been there going; I don't know, but he was there, had already commenced to go to school.

Q.. But you are not positive? A. No.

Q. Maurice Hooker lived how many miles from Fredonia? A. Oh, I guess when he would be at home, about 15 miles. Three miles south of Hamlet.

Q. In your township? A. No, in the county.

Q. In the Assembly district? A. No, in Mr. Wade's Assembly district.

Q. And you are a resident of the village of Fredonia? A. Yes, and Mr. Nixon is my representative.

Q. Why was it that you applied for the appointment of Maurice Hooker at all, or any other person to perform the same duties? A. Well, I wanted to keep my office in nice shape and clean.

Q. Have you remembered now who that woman was? A. I can't think of her name, I have been trying hard to all the afternoon.

Q. Is the woman that you have in mind and whose name you can't remember, is she the one who was performing the service just immediately to the time you applied for Maurice Hooker's appointment? A. Yes, sir, I think she done it all through his—

Q. Well, preceding his appointment or the request for his appointment? A. I think I got her to work right after this woman that sent these receipts.

Q. That was some time before you applied for Maurice Hooker's appointment, wasn't it? A. Yes, I think so.

Q. After Maurice Hooker's appointment was communicated to you from Washington did you still continue to employ that woman? A. Yes, sir, not Miss whatever her name is.

Q. No, but the one you had in mind? A. Yes, sir, she worked up until I left the office.

Q. What change then was made in the means of cleaning the office by reason of the appointment of Maurice Hooker? A. Well, sir, now I will tell you. I had the office mopped and cleaned twice a week, and before I didn't use to only have it once. The office was mopped and cleaned twice a week; I had her working cleaning windows, cleaning all the wood work, cleaning down the back stairs and keeping the toilet room clean; she mopped that twice a week.

Q. Well, now then in order to obtain more work from this woman and to have her work in the office more frequently, instead of asking for an increased allowance, you asked for the appointment of a laborer to do that work? A. Yes, sir.

Q. That was your means of getting this woman to do more work? A. Yes, sir, because I had more money to pay her.

Q. Did you ever intend to have Maurice Hooker do any work there at all? A. Yes, sir, I did.

By MR. CAHN:

Q. Did you ever ask him to do any work? A. No, I don't know that I did. I think he had offered me his services and I told him when I wanted him I would let him know.

By MR. STANDART:

Q. Did it ever occur to you that your retaining Maurice Hooker there as a laborer and having work performed by a third person was not right and that it might tend to compromise you or others at some time? A. Well, no, sir, I don't know that I did; I will tell you just what my theory was. I thought he could sub-let his work the same as you would a mail contract; I supposed he had a perfect right and if he hadn't I wouldn't have allowed it.

Q. He didn't sub-let it; you did it for him? A. Yes, I got the woman.

Q. You got the woman for him? A. Yes, sir.

Q. So that, as a matter of fact, he received money which you knew he ought not to have received at that time? A. Well,—

Q. That did occur to you, did it not, Mr. Taylor? A. That I hadn't ought to have done it?

Q. That he was receiving money that he ought not to have received? A. Well, it might have.

Q. Now can you answer my first question, as to whether that ever impressed you as being likely to compromise either yourself or others? You needn't answer it if you don't care to, Mr. Taylor.

By MR. FISH:

Q. Do you prefer not to answer that question? A. Yes, I prefer not to. I supposed that I was doing right; I don't know of anything that I was doing wrong; if I had I shouldn't have done it, gentlemen.

Q. Now, Mr. Taylor, just one or two questions. You say you selected Maurice Hooker for the place? A. Yes.

Q. Do you mean to have the committee understand that you selected him without any suggestion from any one else? A. I did, yes, sir.

Q. How do you explain to the committee the fact that you selected Maurice Hooker, a comparative stranger to you, residing in a town some twenty or more miles away, in another Assembly district, in preference to some worthy young man in your own village? A. Well, as I stated that he was agoing, or going to go to school there, and I thought it would help him, and he could do my work; that was all; that he was a worthy young fellow; it ain't 20 miles, it is about 15.

MR. COMAN: I will now read the testimony of Edward D. Vreeland, appearing on page 921.

Mr. Coman read the questions and Mr. Lawyer the answers, as follows:

DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Vreeland, are you a representative in Congress from the State of New York. A. Yes, sir.

Q. From the Thirty-seventh district? A. Yes, sir.

Q. Comprising what counties? A. Chautauqua, Cattaraugus, Allegany.

Q. Your home is where? A. Salamanca, Cattaraugus county.

Q. When were you elected to Congress? A. November, 1899.

Q. To succeed Judge Hooker, who had resigned? A. Yes, sir.

Q. And you were elected for the unexpired portion of his time, were you, first? A. Yes, sir.

Q. And then re-elected in 1900? A. Yes, sir.

Q. And once in two years since? A. Yes, sir.

Q. You are still the representative in that district? A. Yes, sir.

Q. When did you take office? A. A month following election, December, first Monday in December, 1899.

Q. And where you in Washington in the month of December, 1899? A. Yes, sir.

Q. In attendance upon the session of Congress? A. Yes, sir.

Q. It appears in this case that Katherine Clark was appointed to a position in the Fort Plain post office on the 14th day of December, 1899; were you consulted with reference to that appointment by any person? A. No, sir.

Q. Or did you ever recommend her appointment to that position? A. No, sir.

Q. It further appears that on the 2nd of May, 1900, she was transferred to a position in the Fredonia office; were you consulted with reference to her appointment or transfer to the Fredonia post office? A. No, sir.

Q. And you didn't recommend her in any way? A. No, sir.

Q. Do you remember when the session of Congress ended, Congressman, in 1900? A. Well, I could not say from recollection.

Q. Well, could you say whether it was or was not later than May 2nd? A. Well, I should think it was after May 2nd, I think it ran up to the 1st of June, some time.

Q. And you were in Washington during most of the time from the first Monday in December, until the expiration of the session?

A. There during the entire session, yes, sir.

Q. It appears that on the 15th day of January, 1902, Maurice Hooker was appointed to the position of laborer in the Fredonia post office, were you consulted by any person with reference to that appointment? A. No, sir.

Q. And did you recommend the appointment to the department? A. No, sir.

Q. I will ask you generally, Mr. Vreeland, whether you have been consulted by the post office department or by anybody else with reference to any appointment in the Fredonia or Dunkirk post office? A. No, sir, that is, except the postmasters that have expired since.

Q. Except postmasters; and have you made any recommendations with reference to appointments in those two offices? A. Of postmasters?

Q. No, aside from postmasters? A. No.

MR. COMAN: We will now read the testimony of George N. Southwick, appearing on page 928.

MR. CARR: Are you going to read the rest of Mr. Vreeland's testimony on page 923?

MR. COMAN: No, that relates to the Dunkirk leases.

The testimony of George N. Southwick, beginning on page 928, was then read, Mr. Coman reading the questions and Mr. Lawyer the answers of the direct examination, as follows:

GEORGE N. SOUTHWICK, called by counsel for the committee, being sworn, testified:

**DIRECT EXAMINATION:**

Q. Mr. Southwick, are you a representative in Congress from the State of New York? A. Yes, sir.

Q. From what district? A. 23rd.

Q. And were you such representative in January, 1899? A. I was.

Q. And you are acquainted with Warren B. Hooker? A. Very well.

Q. And served with him in Congress? A. I did.

Q. For how long a period? A. Up to that time I had served with him all of the 54th and most of the 55th Congress.

Q. Covering what years? A. Beginning with the 4th of March, 1895.

Q. Now, Mr. Southwick, do you recall the time when Justice Hooker resigned from Congress and was appointed a Justice of the Supreme Court: I mean do you recall the fact? A. I certainly recall the time if not the occasion, because I was defeated for Congress in 1898.

Q. And do you recall whether it was shortly after the election day in 1898? A. My recollection is that it was shortly after election day, within a few days.

Q. Now, do you recall any occasion some time after Justice Hooker's resignation from Congress and his appointment to the bench, when his associates in the New York State Delegation gave him a dinner at Washington? A. I cannot recall clearly any such event as that, judge. In fact, I cannot state that I recall that the republican delegation from New York gave him any dinner whatsoever.

Q. Has your recollection been changed since last night, Mr. Southwick, on that subject? A. Not at all.

Q. Will you kindly, Mr. Southwick, read the article which I point out to you in the Buffalo Express, of January 10, 1899? A. Yes, sir.

Q. Does that aid your recollection in any way? A. Well, that would indicate that a dinner had been given to Judge Hooker by certain members of the republican delegation in the house from the State of New York, but in a general way the names suggest an aggregation of republican members from the State of New York rather than the republican delegation from the State.

Q. Well, are you making that sort of distinction, Mr. Southwick, in answering my questions here as to whether you remember this occasion that I am referring to? A. No, not so much that as to distinguish between the entire republican delegation, you asked

me the question whether the republican delegation from the State had given this dinner.

Q. Well, do you remember an occasion, Mr. Southwick, when certain members of Congress tendered a dinner to Justice Hooker?

A. My recollection is that some time between the date of Judge Hooker's appointment as Justice and the adjournment of the Congress on the 4th of March, 1899, a dinner was given to Judge Hooker.

Q. By whom? A. Well, it seems to me, as I recall the matter that it was given by an eating club known as the Tape Worm Club, rather than by the republican delegation.

Q. Who were present at that dinner? A. I really couldn't tell you.

Q. You were there, weren't you? A. I rather think I was.

Q. Was Congressman Sherman there? A. I couldn't tell you.

Q. Was Congressman Ward there? A. I couldn't tell you.

Q. Now, Mr. Southwick, do you remember a dinner which was given to Justice Hooker in Washington, shortly after his appointment to the bench? A. I remember that a dinner was given to Justice Hooker.

Q. Do you remember any of the persons who were present at that dinner, except yourself and Justice Hooker? A. My difficulty in remembering specifically regarding this Hooker dinner is that so many dinners were given by this particular aggregation of New York members that constituted an eating club and that met every day for luncheon together at the Capitol, in the committee room on accounts, and at luncheon often an invitation was issued for dinner, and no particular formality was required. The fact that Speaker Reed was present is not a particularly distinguishing characteristic of one of these dinners, because the Speaker was one of the two honorary members of this Tape Worm Club, the other being William Barnes, Jr., of Albany. Nor is it the fact that steamed oysters, terrapin and canvasback duck were served, a particularly distinguishing feature.

Q. Just a moment, Mr. Southwick. Mr. Stenographer, what was that question? (Question repeated.) A. I presume that



Judge Hooker and myself were present at a dinner given to Judge Hooker on the date mentioned.

Q. What is that date? A. January, 1899.

Q. When you say you presume that you were do you mean that would be your best recollection, Mr. Southwick? A. Yes, I do.

The cross examination of Mr. Southwick, beginning on page 932, was then read, the questions being read by Mr. Carr and the answers by Judge Goodrich, as follows:

Q. Mr. Southwick, when did you become a member of Congress? A. On the 4th day of March, 1895.

Q. And with one mishap you have served continuously from that time until this? A. I have.

Q. I think you testified that the two years you were out ran from 1898 to 1900? A. From March 4th, 1899, to March 4th, 1901.

Q. Between 1895 and 1901, were you familiar with the custom that obtained between senators of the United States and the members of Congress who were desirous of obtaining appointments to places in the postoffice department of the United States? A. Yes, more or less.

Q. Will you state in a general way the method that was pursued, both by senators and congressmen, in securing appointments from the postoffice department?

THE WITNESS: It was quite a general practice, pretty generally indulged in by senators and representatives, to keep careful watch of villages where free-delivery was about to be instituted and in case the resident——

MR. CARR: Over to 933?

MR. COMAN: I fully approve.

THE WITNESS: I fully approve of what I have stated there as a matter of fact and not of gossip or romance. Wherever the resident member of Congress had no particular candidate for the position he very often surrendered the place to an outside member or Senator who placed in position two months before, if I recall the date correctly and I think I do, two months before free-de-

livery was instituted, a man or a woman without any civil service qualifications in the form of a position on an eligible list, and after serving sixty days, and the institution of free-delivery at this village, the man or woman was subject to transfer into the classified service.

Q. Precisely. A. Into positions within the classified service. It was a common method of evading the spirit of the Civil Service Laws, and the Civil Service Commission repeatedly protested against leaving this loophole in the law, but the law was not amended or the regulations were not changed, as I recall it, until action was taken by the present president of the United States.

Q. In 1901? A. In 1901, I think.

MR. COMAN: The re-direct is short, you better read it if you will.

MR. CARR: Yes (continuing).

#### RE-DIRECT EXAMINATION:

Q. You say this was a general practice, to keep track of positions about to be classified? A. Yes, sir; it was a common practice.

Q. Who indulged in that practice, to your knowledge? A. I don't care to mention names.

Q. You prefer to leave it that it was a general practice among members of Congress? A. It was.

Q. And you say that this was a common method of evading the spirit of the Civil Service law? A. In my opinion, yes; evading the spirit.

Q. And was it so regarded among these people who commonly indulged in it? A. It was so commonly indulged in I don't know whether they ever stopped to consider whether they were evading the spirit of the law or not. It was simply a part of the hunt for places.

Q. I understand you to say that the practice was that after a person had been assigned, or appointed to such a position, had served sixty days, then the practice was to transfer him, without any Civil Service examination, to some other office. Suppose a

person thus assigned had never served at all in the office to which he was appointed, was there any practice indulged in commonly among members of Congress, to have such a person transferred?

A. The person transferred—

Q. (interrupting.) Answer the question please. A. It was impossible—

Q. (interrupting.) No, no; answer that question.

THE WITNESS: I can't understand the question, judge.

MR. FISH: Read the question again.

(Question repeated.) A. Not that I know of.

#### RE-CROSS EXAMINATION:

Q. When I spoke about this custom, a member of Congress understood that an office in the county of Albany was soon to be equipped with a free-delivery system, and that there was an opening there for a place, was it not in accordance with the practice carried out by Congressmen to go and secure the assignment of some person to this Albany place for sixty days and at the expiration of sixty days have them transferred irrespective of whether the party came to Albany to render actual service or not? A. Not that I know of.

Q. You mean by that answer you don't know of any such instance? A. No.

Q. Now, it is the fact that people were assigned to offices about to be classified in different states where they were residents of another state, isn't it? A. Oh, yes.

Q. And the customary requirement was that they should have been appointed for sixty days before they entered the classified service? A. Yes, sir; the sixty days being the sixty days prior to the institution of free delivery.

Q. Now, if they didn't in fact receive pay for that sixty days, did it make any difference in the custom of that appointment whether or not they went to that particular place and rendered actual services? A. Well, practically I lack experience as to whether, as a rule, services were actually performed. I assumed that service was always performed.

MR. CARR: Shall I read this other document here?

MR. COMAN: That is for you to say.

THE PRESIDENT: It isn't necessary to read them, if you offer them in evidence, unless someone requests it.

MR. CARR: There are some there I should like to read.

MR. COMAN: At this time?

MR. CARR: Yes, I think so, they are right here.

THE PRESIDENT: Only such parts of them are to be read as attorney for the respondent wishes to read, unless some member of the joint assembly or members representing the State Bar Association or Mr. Coman requests others to be read.

MR. CARR: I appreciate the fact, Mr. President, that they properly belong to the matter of the defense. I suggested reading them now because they are here in the printed record. If there is any question in regard to it we will read them at another time.

THE PRESIDENT: Have you any objection, Mr. Coman?

MR. COMAN: I can hardly say I have any objection, but I should prefer to have them read when the defense is reached.

MR. CARR: They belong right to the examination of this witness, that is the reason why, that is why they were put in.

JUDGE GOODRICH: Yes, with the consent of the other side.

MR. COMAN: I have no objection.

THE PRESIDENT: Unless objection is made I will permit them to be read into the record at this time. If objection is made, I should hold they should be read on the part of the defense at another time.

MR. COMAN: No objection.

MR. CARR: There are a few of these I wish to read. I read Exhibit L, April 6, 1905.

Ex. L. April 6, 1905.

In your reply refer to File No. and date of this letter.

Address: "C. S. C.,  
Washington, D. C.

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

June 20, 1898.

Sir:

This Commission has the honor to submit a proposed amendment to the civil service rules requiring that before transfer from one department, office, or branch of the service to another the person shall have served six months therein or received absolute appointment after probation. The rules require that a person shall have received absolute appointment before being eligible for transfer. By this it was intended that he should serve six months; but it has been contended in the case of persons appointed without examination that the appointment is absolute at the time of entrance into the service, and the intent of the rule has thus been defeated. In order to carry out the intention that all persons should serve six months before being eligible for transfer, the amendment is offered for your approval.

We have the honor to be,

Your obedient servants,

(Signed) JOHN R. PROCTOR,  
JOHN B. HARLOW,  
M. S. BREWER,

Commissioners.

The President.

MR. CARR: And accompanying that was an amendment to the rule as it then existed, which appears on page 938. It is offered in evidence, Exhibit L 1.

Ex. L. 1.

AMENDMENT TO THE CIVIL SERVICE RULES.

Rule X, clause 2, is hereby amended by striking out in the first line the words "who has received absolute appointment," and inserting in the third line, after the word "Service" the words

"after service of six months therein, or after receiving absolute appointment upon probation under these rules;" so that as amended the clause will read:

2. A person may be transferred, without examination, from any department, office, or branch of the service after service of six months therein, or after absolute appointment upon probation under these rules, upon requisition and consent of the proper offices and the certificate of the Commission: Provided, That no transfer shall be made of a person to a position within the same department or office and the same branch of the service, or to a position in another department, office, or branch of the service, if from original entrance to such position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, or if in said position there is not required, in the judgment of the Commission, the performance of the same class of work, or the practice of the same mechanical trade, performed or practiced in the position from which transfer is proposed. And provided further, that transfer shall not be made without examination, provided by the Commission, to a position for original entrance to which, in the judgment of the Commission, there is required by these rules an examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfer is proposed, but a person employed in any grade shall not, because of such employment, be barred from the open competitive examination provided for original entrance to any other grade.

Executive Mansion.

Approved, 1898.

MR. CARR: It was not approved. I offer, and read in evidence Exhibit L 2, which is a communication from the Civil Service Commission of the United States from the President under date of June 11, 1900.

**Ex. L. 2.**

In your reply refer to File No. and date of this letter.

Address: "C. S. C.,  
Washington, D. C.

**UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.**

**June 11, 1900.**

**Sir:**

We beg to refer to our communication under date of June 21, 1898, submitting and recommending an amendment to Rule X, section 2, whereby all persons shall be required to serve at least six months in the position to which they are appointed when they enter the service, before they are eligible for transfer. This section of the rule now requires that a person shall have received absolute appointment before being eligible for transfer. Under the opinion of the Attorney General (Op. XXI, 534), a person's appointment to a position while under the provisions of the civil service law and rules a person's appointment to a position which is classified cannot become absolute until after a probationary period of six months. Thus the present requirement of the rule works manifest inequity and discrimination in favor of persons appointed without examination and certification by the Commission to positions prior to their classification. Moreover, and particularly, with this construction of the rule as it now stands, the way is open for what would be practically the systematic defeat of the fundamental provision of the civil service act, namely, that positions in the classified service shall be filled as the result of open, competitive examination.

The possibilities of this evil effect of the rule are best and most forcibly illustrated in the postoffice service. As provided by the rules, only postoffices which are free delivery offices are in the classified service, but upon the establishment of the free delivery system in any postoffice, all the officers and employees of that office are at once brought into the classified service by mere operation of the rules. At any time prior, however, and even immediately prior to the establishment of free delivery at an office, and its consequent classification, persons may legally be appointed in that office without compliance with the provisions of the civil service law and rules as to the manner of appointment, that is,

without examination and certification by this Commission, and, being appointed to unclassified positions, their appointments are at once absolute appointments. Immediately after the establishment of free delivery and the consequent classification of the office, these same persons are eligible for transfer to any other position in the classified service, subject merely to non-competitive examination, or subject to no examination at all, as the case may be. Thus a person appointed as clerk in a postoffice one day prior to its classification may, under the rule as it now stands, be transferred and appointed the day after the classification of the office to any other position in the classified service without competitive examination as required by the civil service act. The fact should also be here mentioned that positions in postoffices are not what are known as statutory positions, that is, specifically created by Congress, but are created by the Department out of what is known as a lump appropriation. This fact greatly emphasizes the derogatory effect of the rule to which your attention is directed, in that the number of persons who may be appointed in an office immediately prior to its classification is not by any means limited to the needs of the service of that office, it being altogether possible to so appoint a very large number of persons, and immediately after classification of the office, transfer them to other parts of the service; and as the few days' employment necessary for the purpose is such an inconsiderable draft upon the lump appropriation, the number of persons who may be so appointed in any office and immediately transferred is practically unlimited in the discretion of the Department. We are gratified to record, in this connection, that the advantage which the post-office department actually has taken of this condition is minor in extent in comparison to what this provision of the rules seems to permit. On the other hand, we regret to say that the number of such cases which the Department has permitted is very considerable, and, in our opinion, very largely in excess of what the good of the service or the actual needs of the service could possibly require. In this connection your attention is invited to the accompanying list of such cases which have been permitted since October, 1897. An additional phase of the matter, which has developed from a recent requisition from the Department, is that persons may be appointed in an unclassified office and almost immediately separated, and then, after the classification of that office, may be reinstated for the purpose of immediate transfer, at time within one year from the date of their separation from



the office. This is cited as materially adding to the opportunities for abuse under the present provision of the rules.

In view of the foregoing, we beg to resubmit a draft of an amendment to Rule X, section 2, and to urge its early approval.

We have the honor to be,

Your obedient servants,

(Signed) JOHN R. PROCTOR,

JOHN B. HARLOW,

M. S. BREWER,

Commissioners.

The President.

MR. CARR: And accompanying it an amended rule as proposed in the letter of two years previous.

I offer in evidence Exhibit 3, which is the proposed amended. It is offered and goes on the record.

### Ex. L. 3.

#### AMENDMENT TO THE CIVIL SERVICE RULES.

Rule X, section 2, is hereby amended by striking out all that part thereof preceding the first proviso and inserting in its place the following: "Upon requisition and consent of the proper officers and the certificate of the Commission, a person may be transferred, without examination, from any department, office, or branch of the service, after absolute appointment, upon probation under these rules, or after six months' actual service in a position which is in the classified competitive service at the date of the requisition for transfer."

The section as amended shall read as follows:

2. Upon requisition and consent of the proper officers and the certificate of the Commission, a person may be transferred, without examination, from any department, office, or branch of the service, after absolute appointment upon probation under these rules, or after six months' actual service in a position which is in the classified competitive service at the date of the requisition for transfer: Provided, That no transfer shall be made of a person to a position within the same department or office and the same branch of the service, or to a position in another department, office, or branch of the service, if from original entrance to such

position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, but the provisions in relation to apportionment shall be waived upon the certificate of the appointment officer that the transfer is required in the interests of good administration: *And provided further*, That transfers shall not be made without examination, provided by the Commission, to a position for original entrance to which, in the judgment of the Commission, there is required by these rules and examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfer is proposed; but a person employed in any grade shall not because of such employment be barred from the open competitive examination provided for original entrance to any other grade.

Executive Mansion.

Approved,

1900.

MR. CARR: Exhibit L 4, is a letter from the United States civil service commission to the President under date of December 7, 1901. I do not read that because it is a repetition of what has been stated before.

Exhibit L 4, is as follows:

Ex. L. 4.

In your reply refer to File No. and date of this letter.

Address: "C. S. C.,  
Washington, D. C.

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

Dec. 7, 1901.

The President.

Sir:

We have the honor to submit herewith an amendment to Rule X, section 2, which has been drafted with a view of preventing the transfer of any person who has not rendered at least six months' actual service in the Department, bureau of office in which he became classified and in some position therein which at that time of the transfer is included within the competitive classified service. The advisability of such an amendment grows out of the

fact that as the rule now stands any person who has received absolute appointment may be transferred, subject to the other conditions of the Rules. When Rule X was originally drafted it was thought that this requirement of absolute appointment was equivalent to a requirement of six months' actual service as a condition precedent to transfer, in view of the requirement of six months' probationary service before absolute appointment in case of all persons entering the service through examination. But it has been decided by the Attorney-General (Op. XXI, 534) that appointment in an unclassified position is not subject to probation but is at once an absolute appointment. Therefore, when an office is about to be classified, as for instance, a post-office at which free delivery is about to be established, a person may be appointed therein without examination even upon the very day before the classification takes place, and immediately upon the classification of the office he becomes eligible for transfer (subject, of course, to the other conditions of the transfer rule) to any position in the classified service; whereas a person appointed through examination in the same office after its classification is absolutely barred from transfer for six months. The inequity of this distinction and the greater facility thereby offered for the evasion of the requirement of competitive examination for entrance to the classified service influenced it, the Commission, to recommend the approval of the enclosed amendment.

We have the honor to be  
Your obedient servants,  
(Signed) JOHN R. PROCTOR,  
JOHN B. HARLOW,  
M. S. BREWER,  
Commissioners.

MR. CARR: Exhibit L 5 is also offered in evidence, which is the amendment again submitted and that was approved December 7, 1901.

Exhibit L 5 is as follows:

Ex. L 5.

#### AMENDMENTS TO CIVIL SERVICE RULES.

Rule X, section 2, is hereby amended by inserting therein after the words "upon requisition and consent of the proper officers,

and the certificate of the Commission " the following words: " but no person shall be so transferred who has not actually served for six months in the office in which he became classified and in some position therein which at the time of the request for his transfer is within the competitive classified service;" so that as amended the said section should read as follows:

2. A person who has received absolute appointment may be transferred without examination, from any department, office, or branch of the service, upon requisition and consent of the proper officers, and the certificate of the Commission, but no person shall be so transferred who has not actually served for six months in the office in which he became classified and in some position therein which at the time of the request for his transfer is within the competitive classified service; *Provided*, That no transfer shall be made of a person to a position within the same department of office and the same branch of the service, or to a position in another department, office, or branch of the service, if for original entrance to such position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, but the provisions in relation to apportionment may be waived upon the certificate of the appointing officer that the transfer is required in the interests of good administration, setting forth in detail the reasons therefor, which certificate shall be subject to the approval of the Commission: *And provided further*, That transfers shall not be made without examination, provided by the commission, to a position for original entrance to which, in the judgment of the Commission, there is required by these rules an examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfers is proposed; but a person employed in any grade shall not because of such employment be barred from the open competitive examination provided for original entrance to any other grade.

WHITE HOUSE.

Approved,

MR. CARR: I also offer in evidence reading now from page 945:

" Persons appointed in unclassified postoffices, shortly afterwards classified by the establishment of free delivery thereat, and within six months thereafter transferred to other positions in

the classified service, from October 15, 1897, to February 28, 1900." That appears upon pages 511 and 512 of the report. Then the names are given and the places of the postoffices where they were appointed; the date of their appointment; the date of the classification of the office; the date of the request for transfer and the places or department in which they were transferred. And I might, in that connection, call attention of the committee to the fact that in that table there are fifteen persons who were appointed in that way and immediately after the classification of the offices were transferred into the inspectors' service and became inspectors and employed by the department without any service apparently, so far as we know.

MR. CARR: I also offer in evidence in connection with that Exhibit 32 "A," the table which appears between pages 946 and 947. I do not read it, that will go on the record. The previous one was Exhibit "M."

MR. CARR: I also offer in evidence a similar table or a part of the 17th Report of the Civil Service Commission, covering the year ending June 30, 1900, which is table 39, appearing on pages 574 and 575 of that report, and which is entitled:

"Persons appointed in unclassified postoffice, shortly afterwards classified by the establishment of free delivery thereat, and within six months thereafter transferred to other positions in the classified service, from March 1st, 1900, to February 9, 1901."

And then follows the names of the persons, the postoffice where they were appointed, the date of their appointment, the date of classification, the date of request for transfer, the date and number of transfers certified, the date of transfer, and the office of department into which they were transferred.

MR. CARR: And between pages 948 and 949 the second table. There were 138 cases in the two tables. That is the Katherine Clark appointment.

MR. CARR: I offer in evidence from the 16th report of the Civil Service Commission on pages 64 and 65 where it will be

found this clause 2 of rule 10 as it existed prior to December, 1901, but I don't read it now, it goes on the record at the bottom of page 951 and page 952.

#### Rule X.

Within that part of the civil service of the United States which has been, or may hereafter be, classified under the civil service act, transfers shall be governed as follows:

1. A person in any department of office may be transferred within the same department or office and the same branch of the service upon any tests of fitness, not disapproved by the Commission, which may be determined upon by the appointment officer, subject to the limitations of the provisos of section 2 of this rule.

2. A person who has received absolute appointment may be transferred, without examination from any department, office, or branch of the service, upon requisition and consent of the proper officers, and the certificate of the Commission: *Provided*, That no transfer shall be made of a person to a position within the same department of office and the same branch of the service, or to a position in another department, office, or branch of the service, if from original entrance to such position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, *but the provisions in relation to apportionment shall be waived upon the certificate of the appointing officer that the transfer is required in the interests of good administrations.*

MR. CARR: I offer in evidence a communication from the Civil Service Commission on pages 954, 955 and 956 of this record. I do not wish to read it, it will go on the record.

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

February 9, 1898.

The Honorable •

The Postmaster General.

Sir:

The Commission has the honor to acknowledge receipt of your communication of February 7, 1898, requesting that a certificate be

issued to cover the transfer of C. Ernest Lounsbury from a clerkship in the Van Wert, Ohio, postoffice, with a salary at the rate of \$600 per annum, to a similar position in the Bridgeport, Conn., postoffice. It appears that Mr. Lounsbury was appointed to the position of stamper in the Van Wert postoffice without examination and certification, only two days before the classification of that office by the establishment of the free delivery system.

Before taking action upon this transfer, the Commission desires to invite attention to the following cases, from which it appears that the Department has made appointments to positions in various offices that were about to receive free delivery, solely for the purpose of subsequent transfer to other classified positions.

W. G. Brownlow, appointed a clerk in the Newport News, Va., postoffice, October 15, 1897, classified November 1, 1897, by the establishment of the free delivery service, transferred to the Government Printing Office, November 17, 1897.

W. H. Rooze appointed in the Indiana, Pa., postoffice, on November 22, 1897, classified December 1, by the establishment of the free delivery system, transferred to Baltimore, Md., postoffice on December 21, 1897—actual service prior to transfer thirty days.

Mrs. Laura C. Little, appointed in the Watertown, Mass., postoffice on September 28, 1897, classified October 1, 1897, by the establishment of the free delivery system, and transferred to the Boston postoffice by certificate issued on January 13, 1898.

R. M. Fulton, appointed clerk in the Cripple Creek, Colo., postoffice June 1, 1897, subsequently classified by the establishment of the free delivery system, and transferred to the position of postoffice inspector.

Charles H. Pendleton, appointed to the position of clerk at \$500 per annum in the Athol, Mass., postoffice, on October 23, 1897, classified by the establishment of the free delivery system on November 1, 1897; request now on file for a certificate to cover transfer to the position of postoffice inspector at \$1,300 per annum.

These cases are herewith brought to the attention of your Department with the suggestion that each involves an evasion of the spirit of the civil service rules. In each case the person has been transferred to a position which he could not, under the rules, have entered except as the result of competitive examination. In each case the person has been appointed without examination immediately preceding the date on which the offices had become classified. Such cases are now becoming so numerous that the Commission

deems it proper to invite the Department's attention to the apparent evasions of the civil service rules and to make the request that the practice be discontinued.

Rule X of the revised civil service rules provides that a transfer shall not be made from one office or from one branch of the service to another branch of the service until the person proposed for transfer has received absolute appointment. A person appointed under the civil service rules must have served a satisfactory probationary period of six months before absolute appointment can be given. In the several transfers referred to in this letter it will be apparent that there has been an evasion of the spirit of Rule X upon the question of transfer before the satisfactory probationary period of six months. Very respectfully,

(Signed) JOHN R. PROCTOR,  
President.

MR. CARR: I also offer in evidence Exhibit Q1 the answer of the postoffice department to that communication, to the Civil Service Commission of date of February 19, 1898.

Ex. Q1.

POST OFFICE DEPARTMENT,  
FIRST ASSISTANT POSTMASTER GENERAL,  
WASHINGTON.

Feb. 19, 1898.

Gentlemen:

Replying to your favor of the 9th inst., addressed to the Honorable Postmaster-General, and agreeable to the verbal understanding I had with the Honorable Civil Service Commission on the 17th inst., respecting the transfer of Mr. C. Ernest Lounsbury from a clerkship in the Van Wert, Ohio, postoffice, at a salary of \$600 per annum, to a similar position in the postoffice at Bridgeport, Conn., I have to say that in compliance with your suggestion it is the purpose of the Department in the future to confine appointments of persons at postoffices where the establishment of free delivery is contemplated, to a period of not less than six weeks prior to the establishment, and the appointments to residents of the city in which the establishment of free delivery is to be made. Unless the emergency is great and the neces-



sity extreme, it is our determination to make no appointment at these offices earlier than sixty or ninety days, and unless the non-resident has expert knowledge of the postal service, and his special abilities are required in the establishment, to refute all applications for the appointment of others than residents of the city where the establishment is to be effected. It is our understanding that with this agreement the Commission will certify the appointments that have already been made at the newly established free delivery office, and that the transfers, should any be requested, of these persons will be promptly certified.

Very truly yours,

PERRY S. HEATH,

First Assistant Postmaster-General.

The Honorable Civil Service Commission,  
Washington, D. C.

MR. CARR: I also offer in evidence Exhibit Q 2, which is a communication from the Civil Service Commission to the Honorable The Postmaster General of date of May 16, 1898. That appears upon pages 957 and 958 of the record. I do stop to read that.

Ex. Q. 2.

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

May 16, 1898.

The Honorable  
The Postmaster-General.

Sir:

The Commission desires to be regarded as protesting against the appointment of Miss Emfly Van Orden to a clerk position in the Napa, California, postoffice for the sole purpose as subsequent events show, of transfer to a position in the U. S. Mint at San Francisco, in perversion of the letter and in violation of the spirit of the civil service rules. Ordinarily Miss Van Orden could not be appointed to a position in the U. S. Mint except as the result of competitive examination and certification, as re

quired by the rules, and yet by placing her name upon the roster of the Napa postoffice one day prior to the date of the establishment of the free delivery service, she has reached the position in the U. S. Mint without examination.

This case is one of several cases where it has been apparent that a person has been appointed to a position in a postoffice which was about to have free delivery service, for the sole purpose of subsequent transfer to another branch of the service, without passing the competitive test required by the rules. The Department's attention is invited to the Commission's letter of February 5 (?), relative to the transfer of Charles H. Pendleton from a clerk position in the Athol, Mass., postoffice, to the position of postoffice inspector at \$1,300 per annum, in the Postoffice Department. Soon after this letter was written a conference was had between the First Assistant Postmaster General and the Commissioners, in which the former clearly stated that the practice of making appointments at newly classified postoffices for the purpose of subsequent transfer would cease. Since the date of such conference, however, several cases have been brought to the attention of the Commission, among which may be mentioned the cases of Walter H. Booze, appointed at the Indiana, Pa., postoffice prior to the establishment of free delivery; transferred to the Baltimore postoffice after the establishment of free delivery, and later transferred to the position of postoffice inspector. William R. Keys, appointed to the position of registry clerk in the Palestine, Texas, postoffice for the purpose of subsequent transfer to the position of postoffice inspector, and Arthur N. Hacker, appointed to the clerical force of the Spartanburg, S. C., postoffice for the purpose of subsequent transfer to the postoffice at Bristol, Tenn.

Very respectfully,

(Signed) JOHN R. PROCTOR,  
President.

MR. CARR: I also offer in evidence Exhibit Q3 communication from the Postoffice Department, First Assistant Postmaster General to Civil Service Commission under date of May 21, 1898. I will read that.

Ex. Q3.

POST OFFICE DEPARTMENT,  
FIRST ASSISTANT POSTMASTER GENERAL,  
WASHINGTON.

Entered May 23, 1898, Secretary File.....330 B.

May 21, 1898.

Sir:

Referring to your letter of the 16th inst., (initialed "J. T. D.") respecting the application made to the Commission, probably at the instance of Senator Perkins of California, through the Treasury Department, for the transfer of Miss Emily Van Orden, a clerk in the Napa, California, post office, to a position in the United States Mint at San Francisco. I have to say that this department is entirely free from any imputation of evading the letter or violating the spirit of the civil service rules.

The Department had no knowledge, nor did it have the least suspicion, so far as I know or can ascertain, when Miss Van Orden was appointed to a position in the Napa post office prior to its classification by the establishment of free delivery, that there was an intention to have her transferred elsewhere; and besides, the application did not come from this Department.

With intent to observe faithfully the understanding I made with the Civil Service Commission, I have refused every application for appointment at offices to be classified where I had any reason to believe that it was intended to subsequently make application for transfer. In this case it was represented at the time of Miss Van Orden's appointment that she was a resident, and nothing was said respecting her transfer after classification.

I desire most respectfully to enter my protest to the imputation cast upon me in your letter, and to state that, so far as I know there has been no infraction of the understanding referred to, and so far as I know the Department has not been a party to any transaction that would in the least discredit the letter or the spirit of civil service rules, and it had been my intention to faithfully respect the agreement.

If anyone has asked for Miss Van Orden's transfer, and the Commission believes that it would be improper to grant the application it has the power to refuse; it is not a subject of

jurisdiction of the Post Office Department, but rather, in this instance, of the Treasury Department.

So far as the other instances referred to are concerned they antedated our agreement.

In view of the extraordinary temper of your letter, and the direct aspersion cast upon me by an accusation that I have acted in bad faith, I feel that you have absolved me from further effort to guard against any abuse of the privileges granted under the law in the matter of classification of employees at post offices where free delivery is established and their transfer, and that I am at liberty in the future to exercise the rights the law has given me.

Very respectfully,

(Signed) PERRY S. HEATH,

First Assistant Postmaster General.

Honorable JOHN R. PROCTOR,

President Civil Service Commission.

MR. CARR: I next offer in evidence Exhibit Q4, from the Civil Service Commission to The Honorable the Postmaster General. That I do not read, but it will appear in the evidence.

Ex. Q4.

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

May 7, 1898.

The Honorable the Postmaster General.

Sir:

The Commission desires to call your attention to a practice in the post office department which is fast becoming common, and which threatens to seriously cripple and even nullify the intent and purpose of the civil service act in important particulars.

The practice referred to is that of appointing clerks in post offices just before the establishment of free delivery therein (which establishment works the classification of the office force under the civil service rules) and immediately or very shortly afterwards transferring such clerks to positions (generally of higher grade) in other portions of the service.

The instances in which this has been done appear on the enclosed sheet headed "Transfers of persons employed in newly

classified post offices." The Commission knows of no instance antedating that of R. V. Fulton, the first name appearing on the list, the certificates for whose transfer from the Cripple Creek, Colo., post office, to the position of Post Office Inspector, is dated January 26, 1893.

As stated in the Commission's first letter upon this subject, dated February 9, each of these cases involve an evasion of the spirit of the civil service law and rules. In each case the person has been transferred to a position which he could not, under the rule, have entered except as the result of examination. When employes are classified as the result of the extension of the operation of the civil service act and rules it is assumed that they have demonstrated their fitness for the positions they occupy, and examination would therefore be unnecessary. It is manifest, however, that this cannot be said of an appointee whose incumbency of an office is of but a few days' or weeks' duration.

The positions now occupied by those of the persons mentioned in the accompanying list transferred to the position of Post Office Inspector, should, it is believed, only be filled by the promotion of those already in the service who are familiar with the duties required or with similar duties. This has been the view of your Department, and it has acted upon this view. In the Report of the Postmaster-General for 1880, Mr. Wanamaker said: "The practice of the Department shows that the Inspector force, for example, is more efficient as a whole if eligibles who have seen public service are selected, instead of those who have simply been examined." Since the Department made a practice of making no appointments from the Post Office Inspector register of the Commission, the entrance examination for this position was discontinued, and it is now given only to those persons whom the Department designates.

In a letter dated October 29, 1897, concerning the register of carrier eligibles for Newport News and Manchester, Va., Postmaster-General Gary stated: "The policy of this Department in making appointments to positions in local postoffices, is to appoint citizens of the town in which the postoffice is located. I therefore request that in certifying eligibles for appointment as carriers at Newport News and Manchester, and other cities where the carrier service exists, only those who are bona fide residents of the cities to which the registers apply shall be cer-

tified. The Commission will undoubtedly admit that the interests of the service will be better subserved if only those who are residents of the cities or towns are appointed on the carrier force of their respective localities."

In subsequent correspondence (see Department's letter of November 24, 1897-F-14720) it was stated that "it will be the uniform practice of this office to appoint only residents at new offices at which the civil service examination had not been held or arranged for prior to November 5," etc. A number, however, of the persons mentioned in the attached list were appointed to positions in post offices far distant from the State of their legal residence, and in the postoffice at Newport News, Va., one of the offices which were the subject of the Department's letter of October 29, 1897, requesting that "only those who are bona fide residents of the cities to which the registers apply shall be certified," a legal resident of Tennessee was appointed.

This evil is not limited to the bounds of one Department, for as seen in the cases of Messrs. Wasson, Jones, Clark and others, transfer to another department may be made under the provision of Civil Service Rule X. There is no limit to the number of persons who may enter the service in this manner. With the establishment of free delivery, at each new post office a dozen or fifty persons might be brought into the classified civil service, to be transferred later to any vacancies that may arise in other portions of the service, and thus the purpose of the passage of the civil service act—the improvement of the civil service making entrance to positions therein depend solely upon fitness as ascertained through competitive examination—might be effectually thwarted.

The system of transfer embodied in the civil service rules, when employed for the purpose for which it was instituted, is a valuable aid to the service. That it should be used to accomplish the defeat of the merit system of appointment to office was never contemplated by those who framed the civil service rules. Yet this is precisely what the perversion of Rule X may accomplish.

Section 2 of the civil service act states that the rules to be prepared are for the purpose of carrying the act into effect, and the most casual reading of the act shows that its primary object was to provide for the filling of all positions coming

within its purview as the result of open, competitive examinations, practical in their character, except where such positions are already filled by persons familiar with the duties thereof and for whom an examination would be a superfluity.

The agreement contained in the Department's letter of February 19, would effectually cure the evil to which attention is hereby invited. Such agreement was as follows:

"It is the purpose of the Department in future to confine appointments of persons at post offices where the establishment of free delivery is contemplated, to a period of not less than six weeks prior to the establishment, and the appointment to residents of the city in which the establishment of free delivery is to be made. Unless the emergency is great and the necessity extreme, it is our determination to make no appointment at these offices earlier than 60 or 90 days, and unless the non-resident has expert knowledge of the postal service, and his especial abilities are required in the establishment, to refuse all application for the appointment of others than residents of the city where the establishment is to be effected.

The Commission earnestly hopes that this arrangement may be at once re-established.

Very respectfully,

JOHN R. PROCTOR,  
President.

MR. CARR: I also offer in evidence Exhibit Q 5 from the United States Civil Service Commission to the Postmaster General under date of April 4, 1899, appearing on pages 963, 964, 965, 966, and 977 of the printed record.

Ex. Q-5

UNITED STATES  
CIVIL SERVICE COMMISSION.  
WASHINGTON, D. C.

April 4, 1899.

The Honorable,  
The Postmaster-General.

Sir:

The Commission is in receipt of the Department's request of March 29, for the transfer of John Mahin, a clerk in the

Webster City, Iowa, post office, to the position of post-office inspector. Mr. Mahin was appointed to the post office named on January 30, 1899, and the office was classified, as the result of the establishment of the free delivery system therein, on February 1, 1899.

Transfers of this character are fast becoming common, and since in this practice inheres the power to cripple and even nullify the intent and purpose of the civil service act—making appointment and promotion in the public service dependent solely upon fitness as ascertained through competitive examinations supplemented by a probationary period of service—it is deemed proper to again bring this matter to your attention.

The instances in which transfers of this character have been made appear on the enclosed sheet headed "Transfers of persons from newly classified post offices." The Commission knows of no instance antedating that of R. M. Fulton, the first name appearing on the list, the certificate for whose transfer from the Cripple Creek, Colo., post office to the position of Post Office Inspector, is dated January 26, 1898.

As stated in the Commission's first letter upon this subject, dated February 9, each of these cases involves an evasion of the spirit of the civil service law and rules. In each case the person has been transferred to a position which he could not, under the rules, have entered except as the result of examination. Where employees are classified as the result of the extension of the operation of the civil service act and rules it is assumed that they have demonstrated their fitness for the positions they occupy, and an examination would therefore be unnecessary. It is manifest, however, that this cannot be said of an appointee whose incumbency of an office is of but a few days' or weeks' duration.

The positions now occupied by those persons mentioned in the accompanying list transferred to the position of postoffice inspector should, it is believed, only be filled by the promotion of those already in the service who are familiar with the duties required or with similar duties. This has been the view of your Department, and it has acted upon this view. In the Report of the Postmaster General for 1890, Mr. Wanamaker said: "The practice of the Department shows that the Inspector force, for example, is more efficient as a whole if eligibles who have seen



public service are selected, instead of those who have simply been examined. Since the Department made a practice of making no appointments from the Post Office Inspector register of the Commission, the entrance examination for this position was discontinued, and it was given only to those persons whom the Department designated.

In a letter dated October 9, 1897, concerning register or carrier eligibles for Newport News and Manchester, Va., Postmaster General Gary stated: "The policy of this Department in making appointments to positions in local post offices, is to appoint citizens of the town in which the post office is located. I therefore request that in certifying eligibles for appointment as carriers at Newport News and Manchester, and other cities where the carrier service exists, only those who are bona fide residents of the cities to which the registers apply shall be certified. The Commission will undoubtedly admit that the interests of the service will be better subserved if only those who are residents of the cities or towns are appointed on the carrier force of their respective localities."

In subsequent correspondence (see Department's letter of November 24, 1898-F-14270-W) it was stated that "it will be the uniform practice of this office to appoint only residents at new offices at which the civil service examination had not been held or arranged for prior to November 5," etc. A number, however, of the persons mentioned in the attached list were appointed to positions in post offices far distant from the state of their residence, and in the post office at Newport News, Va.—one of the post offices which were the subject of the Department's letter of October 29, 1897, requesting that "only those who are bona fide residents of the cities to which registers apply shall be certified"—a legal resident of Tennessee was appointed.

This evil is not limited to the bounds of one Department, for as seen in the cases of Messrs. Wasson, Jones, Clark and others, transfer to another department may be made under the provisions of Civil Service Rule X. There is no limit to the number of persons who may enter the service in this manner. With the establishment of free delivery, at each new office a dozen or fifty persons may be brought into the classified civil service, to be transferred later to any vacancies that may arise in other portions of the service, and thus the purpose of the passage of the

civil service act—the improvement of the public service by making entrance to positions therein depends solely upon fitness as ascertained through competitive examination—might be effectually thwarted.

The system of transfer embodied in the civil services rules, when employed for the purpose for which it was instituted, is a valuable aid to the service. That it should be used to accomplish the defeat of the merit system of appointment to office was never contemplated by those who framed the civil service rules. Yet that is precisely what the perversion of Rule X may accomplish.

Section 2 of the civil service act states that the rules are prepared for the purpose of carrying the act into effect. But the most casual reading of this act shows that its primary object was to provide for the filling of all positions coming within its purview as the result of open, competitive examination, practical in their character, except where such positions are already filled by persons familiar with the duties thereof, and for whom an examination would be a superfluity.

Passing by without further comment the widespread possibilities for injury to the public service which this practice makes possible this custom at the present time operates to defeat the purpose of the civil service act and injure the Government service by—

1. Filling positions with persons who have not passed an examination prepared with reference to the needs of such positions.

2. Transferring to responsible supervisory positions elsewhere under the Department persons without training for such positions, to the exclusion of persons possessing such training. This, contrary to the Department's declaration that experience in the public service is essential to the proper discharge of the duties of such positions.

3. Transferring persons to positions in other Departments for which they have not passed the required competitive examination, and to which, in many cases, those already in such Departments would be promoted.

4. Discrediting the Department and this Commission in the eyes of the public by the appointment just prior to classification of post offices of persons not even legal residents of the

State in which the particular office is located, and at the same time objecting to the appointment of eligibles who are residents of the same county in which a post office is located.

5. Defeating the reasonable rights of promotion of those in the classified service by first appointing an excessive number of persons in the office (without any examination) and later filling vacancies in such service by the transfer of those persons.

The agreement contained in the Department's letter of February 10 would effectually cure the evil to which attention is here invited. Such agreement was as follows:

"It is the purpose of the Department in future to confine appointments of persons at post offices where the establishment of free delivery is contemplated, to a period of not less than six weeks prior to the establishment, and the appointments to residents of the city in which the establishment of free delivery is to be made. Unless the emergency is great and the necessity extreme it is our determination to make no appointment at those offices earlier than sixty or ninety days, and unless the non-resident has expert knowledge of the postal service, and his especial abilities are required in the establishment, to refuse all applications for the appointment of others than residents of the city where the establishment is to be effected."

The Commission earnestly hopes that this arrangement may at once be established.

Very respectfully,  
(Signed) JOHN R. PROCTOR,  
Commissioner.

MR. CARR: I also offer in evidence Exhibit Q 6. This is a communication from the United States Civil Service Commission to the Postmaster General under date of May 24, 1900, that appears on pages 967, 968, 969, 970 and 971 of this printed record.

●

JULY 12.]

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Exhibit Q 6:

Address: "Civil Service Commission  
Washington, D. C."

In your reply refer to  
File No.  
and date of this letter

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

May 24, 1900.

The Honorable  
The Postmaster General.

Sir:

The Commission has on various occasions invited your attention to the appointment of persons to positions in postoffices which are about to be classified by the establishment of free delivery service thereat, and the subsequent transfer of such persons to other positions in the classified service.

In a letter to the Commission under date of February 19, 1898, the First Assistant Postmaster General, referring to this same subject, said: "It is the purpose of the Department in the future to confine appointments of persons at postoffices where the establishment of free delivery is contemplated to a period of not less than six weeks prior to the establishment, and the appointments to residents of the city in which the establishment of free delivery is to be made."

In this connection the Commission begs to invite your attention to the papers enclosed herewith, as follows:

(1) A clipping from the Commission's Fifteenth Report, pp. 389-391.

(2) A clipping from the Commission's Sixteenth Report, pp. 511-512, showing the names of persons appointed in unclassified postoffices, and after classification transferred to other positions in the classified service, between October 15, 1897, and February 28, 1900.

(3) Statement giving the same information for the period between March 1, 1900, and May 15, 1900.

(4) Statement showing names of persons appointed as clerks in unclassified postoffices just prior to classification and upon classification transferred to the position of carrier in the same

office, thus avoiding the examination held for that position (a practice which was never resorted to until within the past two or three years).

The papers in the Commission's possession do not in all cases show the place of residence of the persons appointed in these unclassified postoffices, prior to the date of their appointment, but in many cases, perhaps a majority of those mentioned in the tables herewith, it is apparent that the persons were not residents of the town in which they were appointed.

By an examination of the statements herewith it will be found that since the date of the First Assistant Postmaster General's letter above quoted at least 31 persons have been appointed to positions in unclassified postoffices less than six weeks prior to the date of the establishment of free delivery thereat, contrary to the express purpose of the Department as shown in the letter above referred to; while many others appear to belong in reality to the same class although falling outside of the six-weeks' limit laid down.

The proportions to which this practice had grown threatened to defeat, in large measure, the purpose of the Civil Service Rules, and to demoralize the service materially. These facts are therefore again brought to your attention with the urgent request that steps be taken at least to carry into effect the pledges contained in the Department's letter of February 19, 1898, above referred to; and the Commission is of the opinion that it would be in the direction of wisdom to increase, say to three months, the period immediately prior to the classification of an office, during which appointment will not be authorized thereat.

Persons thus brought into the classified service by the classification of the positions occupied by them are held to be at once absolutely appointed, needing no probationary service to complete their status and render them eligible to transfer; whereas, persons entering the same positions through the Commission's regular competitive examinations are required to serve a probationary period of six months before they are given absolute appointment and considered eligible to transfer. In the cases of persons who have held the positions and performed the duties thereof for a considerable period prior to the date of classification, this immunity from probation is obviously right and just; but in the absence of persons who have held the positions for but a few days

or a few weeks prior to the classification thereof, this immunity from probation and the consequent privilege of immediate transfer are evidently outside of the intent of section 7 of Civil Service Rule 11, that persons brought in by classification "shall be entitled to all the rights and benefits possessed by persons of the same class or grade appointed upon examination." It is obviously not the intention that they shall have greater rights; and yet this practice does actually give them greater rights, and rights which are absolutely prohibited to persons entering by examination.

Moreover, the Commission has information of appointments of this kind having been made, followed by transfer after classification, in which the appointee never reported for duty, nor performed any services whatever, in the position to which he was nominally appointed and from which he was afterwards transferred. In cases of this kind, the Commission submits that the violation of the spirit of the Civil Service Law and Rules is not merely evident but flagrant.

Akin to the cases herein under discussion is that of the appointment of a clerk at Mount Clemens, Mich., as reported at pp. 299-300 of the Sixteenth Report, a clipping of which is handed you herewith. In this case it will be observed that a clerk was appointed without examination the day before the office was classified and *drew pay* from that date on, although not doing any regular service in the office for more than a month afterwards.

In further connection with this subject, there is also enclosed a clipping from pp. 303-305 of the Sixteenth Report, containing a digest of the correspondence of the Commission with the Postoffice Department in regard to the certification of eligibles for the position of carrier in the postoffice at Vicot, Colo., upon the establishment of free delivery thereat. You will observe that in this correspondence the Postoffice Department objected to *certifying* for appointment persons who had passed the civil service examination unless they showed that they had been actually residing in the city in which they were to serve for some considerable period prior to the establishment of free delivery thereat. The practice of the Department in the cases under discussion in this letter has been apparently at variance with the position assumed by it in the discussion outlined in the clipping referred to, inasmuch as the Department has authorized the appointment of per-

sons who were at the time actually resident in other towns, sometimes at a considerable distance, and even in other States. It will also be noted that the Commission in advertising initial examinations for the position of carrier states that it is the practice of the Department to give preference in appointments to eligibles resident in the town in which the examination is held.

Your attention is also invited to the number of persons who have thus been put into the position of postoffice inspector by a mere class examination, without that long experience in the service of the Department which has hitherto been considered necessary to fit a man for this important position.

Very respectfully,

JOHN B. PROCTOR,

*President.*

P. S.—Since writing the above, the Commission's attention is called to request from your Department for the necessary certificate for the transfer, "in the interest of good administration," of Mr. H. C. Davis, appointed as clerk in the Summit, N. J., postoffice, to the position of clerk in the office of the Third Assistant Postmaster General. Mr. Davis was appointed in the Summit postoffice on May 4, 1900; said postoffice was classified on May 16, and the request for Mr. Davis' transfer referred to is dated May 17. Mr. Davis, therefore, appears to have demonstrated in something less than two weeks an ability which justifies the Department in asking the Commission to waive the apportionment, which is one of the fundamental principles of the civil service law.

MR. CARR: I also offer in evidence Exhibit R, which appears on page 971, with regard to the transfer of Katherine K. Clark. I read this.

Ex. R. April 6, 1905.

R. L.

April 21, 1900.

Transfer of Katherine K. Clark from a clerkship in the Fort Plain, N. Y., postoffice, to a similar position in the Fredonia, N. Y. postoffice.

Respectfully referred to the Commission for approval. Miss Clark was appointed without examination at Fort Plain, N. Y.,

on December 15, 1899. The office became classified by the establishment of the free delivery service on February 1, 1900. Since the case was last referred to the Commission the postmaster has corrected his roster to show Miss Clark's appointment on December 15, 1899. He also submitted a letter from the Postoffice Department which authorized this appointment. Examination will not be required.

(Signed) JOHN T. DOYLE,  
Secretary.

MR. CARR: That was in the handwriting of Commissioner John B. Harlow.

MR. COMAN: What is in the handwriting?

MR. CARR: Above note in handwriting of Commissioner John R. Proctor.

MR. COMAN: The note is "allowed B. H."

MR. CARR: Yes, "allowed B. H."

On the next page Exhibit R 1.

Ex. R 1.

CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

COPY.

April 20, 1900.

SERVICE RECORD.

Name, Katherine K. Clark.  
Office, Fort Plain, N. Y.  
Position, Stamper.  
Date Appt'd, Dec. 15, 1899.  
Date of Separation.....  
Manner of Separation.....  
Office classified Feby. 1, 1900.

MR. CARR: Exhibit R 2 (reads)



Ex. R/2.

G. W. L.

In your reply refer to  
File No.

and date of this letter.

Address "Civil Service Commission,  
Washington, D. C."

UNITED STATES  
CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

April 14, 1900.

The Honorable,  
The Postmaster-General.

Sir:—

Referring to your request of April 14, for a certificate to cover the transfer of Miss Katherine K. Clark from a clerkship in the Fort Plain, N. Y., postoffice, to a similar position in the Fredonia, N. Y., postoffice, the Commission has to say that the roster received from the postmaster giving the names of the clerks who were brought into the classified service by the establishment of the free delivery service on February 1, 1900, does not contain the name of Miss Clark. If an error was made in not reporting her as one of the employees of the office on the date of the establishment of the free delivery service the postmaster shall submit a corrected roster.

Very respectfully,

(Signed) JOHN R. PROCTOR,

President.

MR. CARR: I also offer in evidence Exhibit R 3 which relates to the same subject on page 973.

Ex. R/3.

CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

COPY.

April 14, 1900.

Transfer of Miss Katherine K.  
Clark from a clerkship in the  
Fort Plain, N. Y., post office, to  
a similar position at Fredonia,  
N. Y.

J. T. D. (handwriting)

Respectfully referred to the Commission for consideration. Miss Clark appears to have been appointed without examination at Fort Plain on December 15, 1899. That office became classified by the establishment of the free delivery service on February 1, 1900. Examination will not be required.

(Signed) JOHN T. DOYLE,  
Secretary.

No. P.

Name note on the  
roster

(Above note in the handwriting  
of Commissioner John R. Proctor.)

MR. CARR: Exhibit R-4, on page 974, which is the request from the First Assistant Postmaster-General to the Civil Service Commission, requesting a certificate to cover the transfer of Katherine K. Clark from a clerkship in the Fort Plain office to the one at Fredonia.

Ex. R/4.

ENTERED

APR 17, 1900.

Secretary

File.....B

In your reply  
please refer to initials and date.

Address envelope,  
Salary and Allowance Division  
A. F. (handwriting).

POST OFFICE DEPARTMENT,  
FIRST ASSISTANT POSTMASTER GENERAL,  
SALARY AND ALLOWANCE DIVISION,  
WASHINGTON.

Subject: Transfer.

April 14, 1900.

ANSWERED

U. S. C. S. C.

APR. 14, 1900.

The Civil Service Commission,  
Washington, D. C.

Gentlemen:

I have the honor to request a certificate to cover the transfer of Miss Katherine K. Clark from a clerkship in the Fort Plain, N. Y., post office, to a similar position in the Fredonia, N. Y., post office.

Miss Clark was originally appointed in the Fort Plain, N. Y., post office, December 15, 1899.

Very respectfully,  
(Signed) PERRY S. HEATH,  
First Assistant Postmaster General.  
G. W. B. (handwriting)

SERVICE RECORD.

Name, Miss Katherine K. Clark.  
Office, Fort Plain, N. Y.  
Position, Clerk.

CERTIFICATE No. 1906, Date Appt'd.....*No record. Name not on roster.*

Issued Apr. 23, 1900, Date of Separation.....

Manner of Separation.....

Classified Feby. 1, 1900.

MR. CARR: Exhibit R-5, which was a letter from the postmaster at Fort Plain correcting an error.      c

JULY 12.]

531

Ex. R/5.

COPY.

UNITED STATES POST OFFICE,

Fort Plain,  
State of N. Y.

5780

File

April 19, 1900.

Civil Service Com.

Washington, D. C.

Sirs:

Thro' an error, failed to place Katherine K. Clark on the roster submitted by me to your Board Feb'y 1st, 1900. Enclosed you will find department letter authorizing the same. Place Katherine K. Clark name on roster.

Yours Resp'y,

(Signed) EMIEL REBELL,

P. M.

P. S.—Please return the enclosed letter.

MR. CARR: That is all.

MR. COMAN: Mr. President, I offer in evidence page 977. I offer in evidence Exhibits 182-187 both inclusive on pages 977 to 987 inclusive, being the payrolls of the Fredonia postoffice.

Exhibit 182 is as follows:

**Form  
Clerk Hire—**

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official des- ignation.)	Remarks.	Annual Salary.
Ball, Frank P.	Gen. Utility Clerk.		\$600
Clark, Katherine K.	M. O. Clerk.	Salary for Jan. \$800, Feb. \$900, Mar. 1000	
Caldwell, Ora E.	Gen. Utility Clerk.		600
Easton, Edwin W.	Stamper.		600
Hooker, Maurice	Laborer.	Appointed, Jan. 1st.	400
Landers, Chas. H.	Stamper.		600

Indorsed on back. Clerk Hire. Regular Roll. P. O. Fredonia,  
\$925.00.

(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.

Regular Roll.... Temporary Service.... Vacation Service....

(Printed Instructions also on back.)

1500.

## Regular Roll.

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending March 31st, 1902.

Services Performed. (Both dates inclusive.)		Amount	Signatures.	Audi- tor's Check.
From—	To—	Paid.		
Jan. 1st—Mar. 31st.		\$150.00	Frank P. Ball.	
Jan. 1st—Mar. 31st.		225.00	Katherine K. Clark.	
Jan. 1st—Mar. 31st.		150.00	Ora E. Caldwell.	
Jan. 1st—Mar. 31st.		150.00	Edwin W. Easton.	
Jan. 1st—Mar. 31st.		100.00	Maurice Hooker.	
Jan. 1st.—Mar. 31st.		150.00	Chas. H. Landers.	

State New York. Quarter Ending Mar. 31, 1902. Amount paid,

Total....

Exhibit 183 is as follows :

Form  
Clerk Hire—

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official designation.)	Remarks.	Annual Salary.
Ball, Frank P.	Gen. Utility Clerk.		\$600
Clark, Katherine K.	M. O. Clerk.		1000
Caldwell, Ora E.	Gen. Utility Clerk.		600
Easton, Edwin W.	Stamper.		600
Hooker, Maurice	Laborer.		400
Landers, Chas. H.	Stamper.		600

Indorsed on back. Clerk Hire. Regular Roll. P. O. Fredonia,  
\$950.00.

(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.

Regular Roll.... Temporary Service.... Vacation Service....

(Printed Instructions also on back.)

1500.

**Regular Roll.**

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending June 30th, 1902.

Services Performed. (Both dates inclusive.)		Amount	Signatures.	Audi-
From—	To—	Paid.		tor's Check.
April 1st—June 30th.		\$150.00	Frank P. Ball.	
April 1st—June 30th.		250.00	Katherine K. Clark.	
April 1st—June 30th.		150.00	Ora E. Caldwell.	
April 1st—June 30th.		150.00	Edwin W. Easton.	
April 1st—June 30th.		100.00	Maurice Hooker.	
April 1st—June 30th.		150.00	Chas. H. Landers.	

State, New York. Quarter ending June 30, 1902. Amount paid,

Total....



Exhibit 184 is as follows:

Aud.—Fo  
Clerk Hire—

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official des- ignation.)	Remarks.	Annual Salary.
Ball, Frank P.	Gen. Utility Clerk.		\$600
Clark, Katherine K.	M. O. Clerk.		1000
Caldwell, Ora E.	Stamp Clerk.		800
Easton, Edwin W.	Mailing Clerk.		800
Hooker, Maurice	Laborer.		
Landers, Chas. H.	Letter Distributor.		400
Sessions, Chauncey D.	Chief Clerk.		1500

Indorsed on back—Aud.—Form No. 1500. CLERK HIRE.  
ing Sept. 30, 1902. Amount paid, \$1,475.00. I certify that the  
(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.

Regular Roll.... Temporary Service.... Vacation Service....

(Printed Instructions also on back.)

rm 1500.

**Regular Roll.**

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending September 30, 1902.

Services Performed. (Both dates inclusive.)		Amount		Audi-
From—	To—	Paid.	Signatures.	tor's Check.
July 1st—Sept. 30th.		\$150.00	Frank P. Ball.	
July 1st—Sept. 30th.		350.00	Katherine K. Clark.	
July 1st—Sept. 30th.		200.00	Ora E. Caldwell.	
July 1st—Sept. 30th.		200.00	Edwin W. Easton.	
July 1st—Sept. 30th.		200.00	Chas. H. Landers.	
July 1st—Sept. 30th.		375.00	Chauncey D. Sessions.	

**Regular Roll.** P. O. Fredonia, State New York. Quarter end-  
within roll is true and correct. Melvin H. Taylor, Postmaster.

**Total....**

Exhibit 185 is as follows:

Form  
Clerk Hire—

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official designation.)	Remarks.	Annual Salary.
Ball, Frank P.	Gen. Utility Clerk.		\$600
Clark, Katherine K.	M. O. Clerk.		1000
Caldwell, Ora E.	Stamp Clerk.		800
Easton, Edwin W.	Mailing Clerk.		800
Hooker, Maurice	Laborer.		400
Landers, Chas. H.	Letter Distributor.		800

Indorsed on back. CLERK HIRE. Regular Roll. P. O.  
Amount paid, \$1100.00.

(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.

Regular Roll.... Temporary Service.... Vacation Service....

(Printed Instructions also on back.)

1500.

**Regular Roll.**

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending December 31st, 1902.

Services Performed. (Both dates inclusive.)		Amount	Signatures.	Audi- tor's Check.
From—	To—	Paid.		
Oct. 1st—Dec. 31st.		\$150.00	Frank P. Ball.	
Oct. 1st—Dec. 31st.		250.00	Katherine K. Clark.	
Oct. 1st—Dec. 31st.		200.00	Ora E. Caldwell.	
Oct. 1st—Dec. 31st.		200.00	Edwin W. Easton.	
Oct. 1st—Dec. 31st.		100.00	Maurice Hooker.	
Oct. 1st.—Dec. 31st.		200.00	Chas. H. Landers.	

Fredonia. State, New York. Quarter ending Dec. 31, 1902.

Total....

Exhibit 186 is as follows:

Aud.—Fo  
Clerk Hire—

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official designation.)	Remarks.	Annual Salary.
Clark, Katherine K.	M. O. Clerk.		\$1000
Caldwell, Ora E.	Stamp Clerk.		800
Easton, Edwin W.	Mailing Clerk.		800
Hooker, Maurice	Laborer.		400
Landers, Chas. H.	Letter Distributor.		800

Indorsed on back—Aud.—Form No. 1500. CLERK HIRE.  
ing Mar. 31st, 1902. Amount paid, \$1,325.00. I certify that the  
(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.  
Regular Roll.... Temporary Service.... Vacation Service....  
(Printed Instructions also on back.)

rm 1500.

**Regular Roll.**

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending March 31st, 1903.

Services Performed. (Both dates inclusive.)		Amount		Audi-
From—	To—	Paid.	Signatures.	tor's Check.
Jan. 1st—Mar. 31st.		\$250.00	Katherine K. Clark.	
Jan. 1st—Mar. 31st.		200.00	Ora E. Caldwell.	
Jan. 1st—Mar. 31st.		200.00	Edwin W Easton.	
Jan. 1st—Mar. 31st.		100.00	Maurice W. Hooker.	
Jan. 1st—Mar. 31st.		200.00	Chas. H. Landers.	

Regular Roll. P. O. Fredonia. State, New York. Quarter end-  
within roll is true and correct. Melvin H. Taylor, Postmaster.

Total....

Exhibit 187 is as follows:

Aud.—Fo  
Clerk Hire—

We, the undersigned Clerks in the Postoffice at Fredonia, State  
sums set opposite our respective names in full for services per

Names. (Alphabetical order. Surname first.)	Employed as— (Give official des- ignation.)	Remarks.	Annual Salary.
Clark, Katherine K.	M. O. Clerk.		\$1000
Caldwell, Ora E.	Stamp Clerk.		800
Easton, Edwin W.	Mailing Clerk.		800
Hooker, Maurice	Laborer.		400
Landers, Chas. H.	Letter Distributor.		800

Indorsed on back—Aud.—Form No. 1500. CLERK HIRE.  
ing June 30th, 1903. Amount paid, \$950.00. I certify that the  
(P. M. should make no entries below this line.)

Summary of Disbursements on Account of Clerk Hire.

Regular Roll.... Temporary Service.... Vacation Service....

(Printed Instructions also on back.)

rm 1500.

**Regular Roll.**

of New York, have received of Melvin H. Taylor, Postmaster, the  
formed during the quarter ending June 30th, 1903.

Services Performed. (Both dates inclusive.)		Amount		Audi-
From—	To—	Paid.	Signatures.	tor's Check.
April 1st—June 30th.		\$250.00	Katherine K. Clark.	
April 1st—June 30th.		200.00	Ora E. Caldwell.	
April 1st—June 30th.		200.00	Edwin W. Easton.	
April 1st—June 30th.		100.00	Maurice Hooker.	
April 1st—June 30th.		200.00	Chas. H. Landers.	

Regular Roll. P. O. Fredonia. State, New York. Quarter end-  
within roll is true and correct. Melvin H. Taylor, Postmaster.

Total....



MR. COMAN: I also offer in evidence Exhibits 188-D, 188-E, further payrolls of the Fredonia postoffice under Arthur H. Moore.

MR. CARR: What is that last one?

MR. COMAN: 1007 to 1015, inclusive, Moore's payrolls, the

MR. GOODRICH: What was your offer under 182 on page

MR. COMAN: I offered the payrolls, Judge.

MR. GOODRICH: How many pages?

MR. COMAN: Why all of them from 977 to 987, both inclusive.

MR. GOODRICH: They are under different numbers, that is Ex. 188d.

(see directions on back)

Aud.—Form

#### CLERK HIRE—

WE, the undersigned Clerks in the Post Office at.....  
have received of A. R. Moore, .....  
services performed during the quarter ending Sept.....

Names. (Alphabetical order. Surname first.)	Employed as— (Give official designation.)	Remarks.	Annual Salary.
Ball, Frank P.	Gen. Utility Clerk.		\$600
Caldwell, Ora E.	Gen. Utility Clerk.		600
Easton, Edwin W.	Stamper.		500
Landers, Chas. H.	Stamper.		500
Moore, Mary L.	Chief Clerk.		800

(printed directions on back of form)

JULY 12.]

545

188-B, and 188-C, found on pages 1007 to 1015, inclusive, being

other being Taylor's.

977?

all.

No. 1500 S.

REGULAR ROLL.

Fredonia, State of New York,

Postmaster, the sums set opposite our respective names in full for  
30th, 1899.

Services Performed. (Both dates inclusive.)		Amount		Audi- tor's
From—	To—	Paid.	Signatures.	Check.
				(red ink) charged back by D. B. E. 8/4 '03.
July 1st,	Sept. 30th,	\$150.—	Frank P. Ball,	
July 1st,	Sept. 30th,	150.—	Ora Caldwell,	
July 1st,	Sept. 30th,	125.—	Edwin W. Easton.	
July 1st,	Sept. 30th,	125.—	Charles H. Landers.	
July 1st,	Sept. 30th,	*200.—	Mary L. Moore.	

750

\*Promoted July 1—800 to  
1000 \$50.00 due her paid  
by new P. M. in pt of 4/99  
(above in red ink)

Ex. 188e.

(see directions on back)

Aud.—Form

**CLERK HIRE—**

WE, the undersigned Clerks in the Post Office at.....  
 have received of A. R. Moore, .....  
 services performed during the period ending November .....

Names. (Alphabetical order. Surname first.)	Employed as— (Give official des- ignation.)	Remarks.	Annual Salary..
Ball, Frank P.	Gen. Utility Clerk.		\$600
Caldwell, Ora	Gen. Utility Clerk.		600
Easton, Edwin W.	Stamper.		500
Landers, Chas. H.	Stamper.		500
Moore, Mary L.	Chief Clerk.		800

(printed directions on back of form)

No. 1500 S.

**REGULAR ROLL.**

Fredonia, State of New York

Postmaster, the sums set opposite our respective names in full for  
9th, 1899.

Services Performed. (Both dates inclusive.)		Amount	Auditor's	
From—	To—	Paid.	Signatures.	Check.
(red ink) charged back by D. B. E. 8/4 '03.				
Oct. 1st,	Nov. 9th,	\$65.21	Frank P. Ball.	
Oct. 1st,	Nov. 9th,	65.21	Ora Caldwell.	
		54.35		
Oct. 1st,	Nov. 9th,	56.52 (red ink)	Edwin W. Easton.	
		54.35		
Oct. 1st,	Nov. 9th,	56.52 (red ink)	Charles H. Landers.	
Oct. 1st,	Nov. 9th,	86.96	Mary L. Moore.	
Total		326.08		(red ink) 18
(in red ink)				20
				26
				32

\$21.74 sal. due Mary L. Moore  
on account of promotion credit  
ed in 2 pt. of 4/99. ●

Ex. 188a.

(see directions on back)

And.—Form

**CLERK HIRE—**

We, the undersigned clerks in the Post Office at  
have received of A. R. Moore, .....  
services performed during the quarter ending December

Names. (Alphabetical order. Surname first.)	Employed as— (Give official des- ignation.)	Remarks.	Annual Salary.
1. Frank P. Ball, 3. Edwin W. Easton, 6. Charles H. Landers, 7. Edwin R. Mixer, 8. Mary L. Moore,		Appt. Oct. 12 @ 600	

(Printed directions on back of form.)

JULY 12.]

549

No. 1500 S.

**REGULAR ROLL**

Fredonia, State of N. Y.

Postmaster, the sum set opposite our respective names in full for  
31,—1898.

Services Performed.			Audi-
(Both dates inclusive.)		Amount	tor's
From—	To—	Paid.	Check.
(red ink) 132.07 charged back by D. B. E. 8/4 '03.			
81 days.		132.80	Frank P. Ball.
92 days.		100.—	Edwin W. Easton.
92 days.		125.—	Charles H. Landers.
92 days.		100.—	Edwin B. Mixer.
92 days.		200.00	Mary L. Moore.
(red ink)		657.07	

Ex. 188b.

(see directions on back)

Aud.—Form

**CLERK HIRE—**

WE, the undersigned Clerks in the Post Office at.....  
 have received of A. R. Moore .....  
 services performed during the quarter ending March .....

Names. (Alphabetical order. Surname first.)	Employed as— (Give official designation.)	Remarks.	Annual Salary.
1. Ball, Frank P.			
2. Caldwell, Ora,		appointed	
3. Easton, Edwin W.			
4. Jeffrey, Minerva,		appointed	
5. Landers, Chas. H.			
6. Mixer, Edwin R.			
7. Moore, Mary L.			
8. O'Neil, Thos.		appointed	

(printed directions on back of form)

No. 1500 S.

## REGULAR ROLL.

Fredonia, State of N. Y.

Postmaster, the sum set opposite our respective names in full for  
31,—1899.

Services Performed. (Both dates inclusive.)		Amount	Signatures.	Audi- tor's
From—	To—	Paid.		Check.
(red ink) charged back by D. B. E. 8/4 '03.				
		150.00	Frank P. Ball.	
Jan. 15,	Mch. 31,	126.66	Ora Caldwell.	
		100.	Edwin W. Easton.	
(red ink) charged back by D. B. E. 3/14 '05				
Jan. 15,	Mch. 31,	126.66	Minerva Jeffrey.	
		125.	Charles H. Landers.	
		100.	Edwin R. Mixer.	
		200.	Mary L. Moore.	
Jan. 15,	Mch. 31,	126.66	Thomas O'Neil.	
		1054.98		



MR. CARR: Mr. President, so far as the last offer is concerned, I renew the objection that I have heretofore made. These pay rolls are those of Arthur R. Moore, as postmaster. The only object that seems to be is with reference to Frank P. Ball. I have called the attention of the President of the joint assembly to the fact that there is no allegation or charge anywhere that there was any connivance or agreement between Justice Hooker and Arthur R. Moore with reference to the appointment of Frank P. Ball, or his retention in the service, and that therefore, whatever may have been done with reference to those pay rolls on which his name appears which confessedly were never seen or known by Judge Hooker, are not competent.

THE PRESIDENT: Objection overruled.

MR. COMAN: I offer in evidence at page 996, section 381 of the Postal Laws and Regulations, found at page 175 of the edition of 1902, which I desire to read:

"At offices of the first and second classes duplicate pay rolls will be made upon Form 1500 for the clerks and employees therein, which will be signed by them, the names and signatures corresponding, and such pay rolls must show the capacity in or official designation under which each person is employed, the names of clerks and employees being arranged in alphabetical order, annual salary, exact amount paid to each and days and period of service. Pay rolls, including the semi-monthly, monthly and quarterly rolls, must be completely made out before being signed."

MR. RAINES: May I ask if there is any way in which we can fix the date when that regulation was put in force?

MR. COMAN: I will bring up the book containing all these regulations. There are some others I desire to offer which I find are not here, and I will fix that date.

I now read the examination of Edwin W. Easton at page 989.

(The testimony of Edwin W. Easton was then read, Mr. Coman reading the questions and Mr. Lawyer the answers of the direct examination.)

EDWIN W. EASTON, called by Mr. Coman, and being duly sworn, testified:

DIRECT-EXAMINATION by MR. COMAN:

Q. Where do you live, Mr. Easton. A. Fredonia, N. Y.

Q. Are you a clerk in the Fredonia postoffice? A. Yes, sir.

Q. How long have you been such clerk? A. Since March, 1897.

Q. Do you remember the date when the free delivery service was installed at Fredonia? A. April 1st, 1899.

Q. When was the first delivery actually made? A. It was about the 15th, from the 15th to the 17th, I can't tell positively.

Q. What was the occasion for that delay? A. The equipment hadn't come, equipment for the postoffice, such as letter boxes, pouches and cases for the carriers.

Q. When did the equipment arrive? A. Well, I can't tell positively, I think it was about the 12th.

Q. Do you know Thomas O'Neill? A. Yes, sir.

Q. A carrier in the postoffice? A. He is.

Q. When did he commence work in the Fredonia postoffice? A. When did he commence actual work?

Q. Yes. A. About the 15th of April, 15th to the 17th.

Q. 15th of what? A. April, 1899.

Q. Do you know Ora Caldwell? A. Yes, sir.

Q. When did he commence work in the Fredonia postoffice? A. July 3rd, 1899.

Q. I show you Ex. 185 (showing it to witness). Is that a pay nize that as one of the pay rolls of the Fredonia postoffice, which you signed? A. I do.

Q. When you signed that pay roll was the name Frank P. Ball or any of the entries opposite his name upon it? A. I didn't see it.

Q. When you signed that pay roll was the name of Maurice Hooker or any of the entries opposite his name on it? A. I didn't see his name on it.

Q. What do you say as to whether it was there or not? A. Why, I know it wasn't there.

Q. I show you Ex. 183 (showing it to witness). Do you recognize that as a pay roll, which you signed? A. Yes, sir.

Q. When you signed that pay roll were the names of Ball or Maurice Hooker or either of them upon it? A. No, sir.

Q. I show you Ex. 184 (showing it to witness). Is that a pay roll which you signed? A. Yes, sir.

Q. When you signed that was the name of Frank P. Ball or Maurice Hooker upon it? A. No.

Q. I show you Ex. 185 (showing it to witness). Is that a pay roll which you signed? A. Yes, sir.

Q. When you signed it was the name of Frank P. Ball or Maurice Hooker upon it? A. No, sir.

Q. I show you Ex. 186 (showing it to witness). Is that a pay roll which you signed? A. Yes, sir.

Q. When you signed it was the name of Maurice Hooker upon it? A. No.

Q. I show you Ex. 187 (showing it to witness), and ask you if that is a pay roll which you signed? A. Yes.

Q. And whether the name of Maurice Hooker was upon that pay roll when you signed it? A. No.

Q. In whose handwriting is the written portion of those pay rolls, excepting signatures? A. C. D. Sessions.

Q. Is the name of Maurice Hooker in the first column of these rolls in the handwriting of Chauncey D. Sessions? A. I should say so.

Q. You are familiar with his handwriting? A. Yes, sir.

Q. He is the deputy postmaster at Fredonia, is he? A. He is.

MR. COMAN: Mr. Easton was recalled at the bottom of page 996.

Q. Was the name Frank P. Ball upon any payroll which you ever signed in the Fredonia office at the time when you signed it? A. Yes, sir.

Q. You say it was upon? A. (interrupting) One time.

Q. When was that? A. It was when Mr. Moore was postmaster; he overpaid us one quarter and the payroll came back

from Washington all made out; Ball's name was on it, with the others.

Q. At any other time was it upon a payroll? A. No.

MR. COMAN: Continuing on the same page, 997, the testimony of S. Ray Fairbanks (Mr. Coman read the questions and Mr. Lawyer the answers of the direct examination; Mr. Carr and Mr. Goodrich the questions and answers on the cross-examination.)

DIRECT-EXAMINATION by MR. COMAN:

Q. Mr. Fairbanks, where do you live? A. Fredonia, N. Y.

Q. At one time were you a letter carrier in the Fredonia post-office? A. Yes, sir.

Q. Were you one of the original letter carriers appointed when the Fredonia office was classified? A. I was.

Q. Did you take the civil service examination? A. Yes, sir.

Q. When was the free delivery service installed at Fredonia? A. April 1st, 1899.

Q. When was the first actual delivery? A. The 17th of April, 1899.

Q. What was the occasion for the delay until that time. A. Well, sir, the cases for the carriers had not arrived or the street letter boxes.

Q. Do you know when the street letter boxes did arrive? A. About the 12th or 13th of April.

Q. Do you know Thomas O'Neill? A. Yes, sir.

Q. Was he one of the carriers appointed at the time when the free delivery went into operation there? A. Yes, sir.

Q. Or immediately before; when did he commence work? A. The same time the rest of us did.

Q. When was that? A. The 17th of April, the first mail we carried; had done some work in the office before that.

Q. Did you do some work in the office before that yourself? A. I did.

Q. What was the nature of the work? A. We got a list of the

people on our various routes and arranged them in alphabetical order and copied them in our route book.

Q. Did Mr. O'Neill assist in that work? A. Yes, sir.

Q. When did you begin that work? A. Well, now, I can't exactly remember; but it was the first week in April, I believe.

Q. Do you know who put up those letter boxes after they arrived? A. Mr. Johnson put up some of them: Mr. O'Neill put up some of them.

Q. Do you know how many Mr. O'Neill put up? A. No, I don't.

Q. Mr. Johnson is dead, is he not? A. Yes, sir.

Q. You have stated when the letter boxes arrived, the 12th or 13th, you think? A. Yes, sir.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Mr. Fairbanks, as a matter of curiosity, where did you get your information, how do you know the boxes came there on the 12th of April, 1899? A. It was about that time.

Q. How do you know it was about that time, did you keep a diary? A. I had kept a diary.

Q. Got it with you? A. No, sir.

Q. Did you make any entry in your diary as to just when those boxes arrived in Fredonia? A. I couldn't state.

Q. You haven't looked to see? A. No.

Q. When you say they arrived there the 12th of April, 1899, that is six years ago, isn't it a matter of memory with you? A. I know it was only a few days before we began work.

Q. No, no, is it a matter of memory with you? A. Whether they did arrive about that time?

Q. Yes. A. Yes, sir, it is.

Q. You think you can recollect over six years so as to say certain letter boxes arrived at Fredonia from Washington on the 12th of April, 1899? A. I don't state positively the 12th, the 12th or 13th.

Q. Suppose I should say it was the 12th of March, how would you know it was April? A. Well, they were there at that time anyway.

Q. How do you know except by recollecting back six years, where did you get your information they weren't there? A. The postmaster, Mr. Moore, said the boxes had not arrived.

Q. When did he say so? A. I can't state that positively; because that was the reason we hadn't begun carrying mail.

Q. When were you appointed a letter carrier? A. I took the oath the 1st day of April, I believe it was.

Q. Do you know anything about it, whether it was the 1st of April or not? A. I believe it was, yes, sir.

Q. When did you draw pay from? A. From the 1st of April.

Q. 1899? A. Yes, sir.

Q. Now do you know when O'Neill was appointed? A. I know he took oath at the same time I did.

Q. Do you know when Johnson was appointed? A. I don't know anybody by the name of Johnson as a letter carrier.

Q. You used his name, he wasn't a carrier? A. No, sir.

Q. He was an outsider called in to assist in putting up those boxes? A. Yes, sir.

Q. Now were you yourself engaged in traveling around Fredonia, getting the names of people who desired the free delivery service at their homes? A. Yes, sir.

Q. Did that commence in March? A. No, sir.

Q. Do you know whether you were out in March or not, except as a matter of recollection? A. I know I didn't do anything pertaining to postoffice work in March.

Q. You know you didn't? A. Yes, sir. ●

Q. Do you know who was in the office engaged in the work, if anybody, in March? A. No, sir, I don't.

Q. You didn't report for duty until the 1st of April? A. No, sir.

Q. That is the first time you claim to have been there to do duty? A. Yes, sir.

Q. As to who was there during March ahead of you you don't know? A. Nothing at all.

## RE-DIRECT EXAMINATION by MR. COMAN:

Q. You may state if there is any reason, or any event, by which you fix the time when the boxes arrived and when free delivery went into actual operation? A. Well, we didn't begin, I know the reason it was delayed was, on account of the cases——

Q. (interrupting) Well, was it delayed as a matter of fact? A. The free delivery?

Q. Yes. A. Yes, sir.

Q. From what time to what time? A. From the 1st of April to the 17th of April.

Q. Was that a fact which aids your recollection as to fixing the date? A. Yes, sir, it is.

## RE-CROSS EXAMINATION by MR. STANCHFIELD:

Q. Where did you get the 17th from? A. That is the 1st day we carried mail, delivered it.

Q. How do you know it was the 1st day, what have you got to corroborate your memory about it, anything? A. I haven't consulted my diary, I have kept a diary for eight or nine years, I presume it is there.

Q. Did you talk with Mr. Coman or Mr. Stevens since your arrival here? A. Yes, sir.

Q. Did they tell you it was the 17th, did they have a newspaper here, the Censor, published in Fredonia or Dunkirk, any newspaper here with the date showing when it commenced? A. They had the Fredonia Censor, file of April 12th.

Q. Did they call your attention to the Fredonia Censor? A. They did.

Q. What did the article in the Fredonia Censor say? A. It stated, commented upon an article in a Dunkirk paper which said the Fredonia letter carriers had been working, and the Censor went on to say their neighbor was a little premature, that the boxes had not yet arrived and the actual delivery of mail had not begun.

Q. Now, outside of your memory being refreshed by the news-

paper article to which they called your attention, have you a sufficiently long and accurate memory to say that six years ago on the 17th of April you can recall what occurred? A. Why, before I came here I recalled we began carrying mail on the 17th of April, I recalled that before I came.

Q. You recalled that without any written memoranda to corroborate or substantiate your memory? A. Yes, sir; I did that fact.

By MR. WEMPLE:

Q. Do you know what O'Neill was doing in March that year? A. I don't.

Q. Do you know what he was doing in April of that year? A. I know that part of the time he was going around getting names of patrons on his route; I know from the 17th of April he was working the same as Lamphere and I.

Q. You live in the same village where he does? A. Mr. O'Neill?

Q. Yes. A. Yes, sir.

Q. Do you know what he did in February of that year? A. I don't.

Q. Then you don't know whether he was employed in February or March in the postoffice or not? A. No, sir; I don't.

MR. COMAN: That is all, I think. Now on page 752. The testimony of William C. Hudson.

The direct testimony of William C. Hudson, beginning on page 752 of the testimony taken before the Assembly judiciary committee, was then read, Mr. Coman reading the questions and Mr. Lawyer the answers, as follows:

Q. Mr. Hudson, where do you live? A. I am living temporarily a short distance out in New Jersey; my residence is really Brooklyn.

Q. What is your occupation at present? A. That of journalist and newspaper man; newspaper man and journalist; I am connected with a newspaper.

Q. At the present time with what newspaper are you connected? A. The Brooklyn Daily Eagle.



Q. And have been for how long? A. On this occasion, I think, four years.

Q. How long have you been engaged in that profession? A. With an interruption of something like eleven years, when I was Secretary of the Board of Railroad Commissioners, I have been since 1867.

Q. Do you remember an occasion, in the year 1903, I think, when you went to the city of Dunkirk and had an interview with one Frank P. Ball? A. I don't think I did in 1903.

Q. Well, give the date as nearly as possible? A. I think it was either the 7th, 8th or 9th of January, 1904.

Q. What was the occasion of your visit to Dunkirk? A. Well, at that time I had learned in Washington that the moneys claimed by the government——

Q. State whether it was to investigate certain matters relating to the Dunkirk postoffice lease for your paper? A. Yes, sir; that was in 1903 I went for that purpose.

Q. Well, what did you go up for in 1904, then? A. Relative to who it was that paid the money demanded by the government in the matter.

Q. Did you have an interview with Frank P. Ball? A. I did.

Q. Whereabouts? A. In his office in Dunkirk.

Q. Who was present at that interview, Mr. Hudson? A. George E. Tiffany and A. M. Colburn, of Fredonia.

Q. Did you request them or either of them to go with you? A. I requested Mr. Tiffany in the morning to go with me.

Q. For what purpose? A. To introduce me to Ball and assure him I was what I represented myself to be, a representative of the Eagle. Mr. Colburn, who was present at the time of the request, volunteered to go also.

Q. Will you state to the committee what took place at that interview? In that interview did Mr. Tiffany say in your presence and hearing that if Ball would give up something that would cause Judge Hooker to be removed, he (Tiffany) would furnish Ball with a bond that the best lawyer in Chautauqua county wouldn't cost him (Ball) a cent, or that he (Tiffany)

would furnish Ball with a bond that the best lawyer wouldn't cost him (Ball) a cent, and that he (Ball) wouldn't have to pay the twenty-five hundred dollar note? A. I didn't hear anything of that kind.

Q. Or anything like that in substance or effect? A. Mr. —

Q. Was that in substance said, Mr. Hudson? A. Well, largely in substance.

Q. Did you say in the course of that interview that you and Judge Woodward were bearers at a funeral in Brooklyn and Judge Woodward told you about Mr. Hooker's connection with the Fredonia and Dunkirk postoffice? A. I did not.

Q. Or that in substance was Judge Woodward's name mentioned during that interview? A. I have no recollection of the mention of Judge Woodward's name.

Q. Did Mr. Tiffany, in the course of that interview, in your presence or hearing, make use of any profane or vulgar language as applied to Justice Hooker or otherwise? A. No; no vulgar or profane language; he used the expletive "damn" on one occasion somewhat emphatically.

Q. He didn't use the name of the deity in a profane way? A. He did not.

Q. Did he make use of any vulgarity? A. None that I can recollect.

Q. Vulgar or obscene remarks? A. None that I can recollect.

Q. Now, Mr. Hudson, I ask you to state to the committee as fully as you are able just what was said by each of the persons present at that interview?

THE WITNESS: On entering Mr. Ball's office, he had a desk, I think, in a drug store, I was presented by Mr. Tiffany, who told him who I was. I think I said to Mr. Ball that I was desirous of talking to him upon matters relating to the Fredonia postoffice and some accusations that had been made against Mr. Hooker. He arose with a smile and came from behind his desk and led us into a back room, a sort of a storeroom of the drug store. Arriving there, we stood in the middle of the floor and I repeated

again that I desired to talk with him on that matter. He said, "now you must excuse me, I have nothing to say on the subject." I said to him, "Mr. Ball, you will admit, of course, you were on the payroll of the Fredonia postoffice for a period of four years and more?" He says, "You will have to excuse me, I have nothing to say on the subject." I can't recall to my mind just exactly the words, but I then took up each one of the points of the accusations against Judge Hooker in the Ball matter and asked him those questions and received constantly that answer and no other from him until I had exhausted them and I then made up my mind that he wasn't willing to talk. I turned back again and said to Mr. Ball, "Of course, you must realize in this talk you haven't denied anything I have presented to you and that it is the fair presumption on my part that you can't deny them." He said, "You must excuse me, I have got nothing to say upon that subject." I then said, "Mr. Ball, there is a story current of which I know nothing at all, I found it since I have been in town floating around, that you have given Judge Hooker a mortgage on a grape farm somewhere in the neighborhood as a security for any moneys which he has advanced you for the restitution of the money demanded by the United States Government." Well, the burden of his remark, "you must excuse me, I have got nothing to say." I then ended my conversation and talk and Mr. Tiffany stepped forward and spoke of that story again, of the mortgage, and Ball said, "I have nothing to say." Mr. Tiffany said, "Well, Frank, if you have done that thing you are a damn fool, you don't owe anything to Hooker, you don't owe him anything, he has buncoed you all the way through in this business, and you might just as well tell that story if it is so, tell the whole thing, whatever there is about it." Ball said, "I have got nothing to say." "Well," he said, "is it true, isn't it a fact that Hooker has got you into this difficulty?" Ball replied, he said, "George, I am not mad at anybody." Tiffany replied, "Well, you ought to be mad at Hooker; I am; everybody knows that I am." and then, I can't recall the letter and word, he entered into a denunciation of Judge Hooker as a man and as a politician.

Well, he made a phrase; he said he hasn't pulled true; he isn't straight; he hasn't been a friend of yours; he got you into this difficulty; he made some assertion he hadn't pulled true as far as he personally, Tiffany, was concerned, made some allegations about the postoffice, I don't quite recall what those were, some previous time; and that ended that episode with him; and Colburn, who hadn't said a word up to that time, suddenly asked, "Frank, I want to ask you a question. You say you won't say anything about the matter," he said, "suppose you are summoned before a legal committee, a legal investigation, would you tell what you know then?" He said, "Yes, sir, every word of the truth that I know." That practically ended the whole episode.

The cross-examination of William C. Hudson was then read, the questions being read by Mr. Carr and the answers by Judge Goodrich, as follows:

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Mr. Hudson, in 1904, who was the managing editor of the Brooklyn Eagle? A. Titularly, Mr. Geo. E. Bobson.

Q. But actually St. Clair McKelway? A. No; he was editor-in-chief. Mr. Evans.

Q. He was editor-in-chief? A. Yes, sir.

Q. He was acting in the capacity of editor when you were sent out by the paper upon this errand? A. Yes, sir.

Q. Did you get your instructions to go to Dunkirk from Mr. McKelway? A. Not in the first instance. Mr. Evans.

Q. Did you have any talk with Mr. McKelway upon the subject of going to Dunkirk? A. Yes, a brief one.

Q. Did Mr. McKelway, in the talk that he had with you prior to your going to Dunkirk, tell you that he had had a conversation with Judge Woodward at a funeral where he had been a pall-bearer with Judge Woodward? A. That he had been to a funeral, I don't recall about pall-bearer; he had ridden in the same coach with Judge Woodward.

Q. What is Judge Woodward's first name? A. John, I think.

Q. He is sitting upon the Appellate Division in Brooklyn? A. Yes, sir.

Q. A fellow judge with Judge Hooker? A. Yes, sir.

Q. Upon the same bench? A. Yes, sir.

Q. And did Mr. McKelway tell you in that conversation that Judge Woodward had told him that if he sent some one to Dunkirk that he could get certain important information in reference to this affair, or in substance that? A. No.

Q. What did McKelway tell you his talk with Woodward was that caused you to go to Dunkirk? A. He said there had been excessive rentals paid for post offices in the State of New York and that he had learned this fact in a conversation with Judge Woodward and that it was reported that there was a marked instance of it in Dunkirk and that was all that Mr. McKelway said upon the subject.

Q. Now did Mr. McKelway tell you to go to Dunkirk and investigate what that rumor reported? A. Not in that language.

Q. No, you tell the language then? A. He said to me, "You will have to take charge of this matter and make an investigation of it; I know no more of this matter; it seems to be of sufficient importance to require looking into; you will have to lay out your own plan and get at it."

Q. Then it was upon the strength of that conversation that you took charge of it? A. I had previously been instructed by Mr. Evans, my immediate superior.

Q. By Mr. Evans to do what? A. To undertake that investigation or inquiry.

Q. Now neither of them in the conversation that you have so far given mentioned the names of anyone you were to see? A. No.

Q. Sure of that? A. Quite sure of that.

Q. They did mention the postoffice at Dunkirk? A. That was mentioned, yes.

Q. Now when you left where did you go, directly to Dunkirk? A. You mean in the beginning of this investigation?

Q. Upon this time when the conversation took place? A. In the first place I went to Washington,—

Q. (interrupting) I am not talking about Washington here. Did you go to Dunkirk? A. I think the first place I stopped in was Schenectady, I think.

Q. Schenectady? A. Yes, sir.

Q. Now you didn't see Mr. Wemple while you were at Schenectady, did you? A. I did not.

Q. I would like to have you tell me, if you will, how you came to go to Dunkirk? A. You have rather stopped me talking about Washington, but I wanted to say that I went to Washington first, —

Q. (interrupting) Pardon me, now, Mr. Hudson, I am not interested in Washington; I am simply asking you about Dunkirk and I want you to answer my question. A. Well, I went to Dunkirk in pursuance partially of that statement and partially of a list that I had of various rentals that had been increased in the State of New York.

Q. Before you got to Dunkirk had you ever met George Tiffany? A. No, sir.

Q. Had you ever met Mr. Colburn? A. No, sir.

Q. Did you know there were any such men living. A. Yes.

Q. Where did you find out? A. Well, that would be somewhat difficult,—

Q. (interrupting) Well, I want to know? A. I can't tell where I got that name from.

Q. Put on your thinking cap and see if you can't tell us? A. I had got quite a list of names; I don't know whence that came.

Q. You yourself know Judge Woodward? A. I have seen him but five times in my life.

Q. You have talked over those matters with him? A. I went there to see him,—

Q. (interrupting) Answer my question. You have talked over these Dunkirk matters with him? A. On two occasions.

Q. In the conversation that you had with Judge Woodward upon either of those occasions, or any other occasion, did he furnish you the names of Tiffany and Colburn as being suitable people for your purposes? A. I don't think,—I am quite certain Mr. Colburn's name was not suggested; it may have been, I am not certain about it, that Tiffany's name was mentioned.

Q. Then what is your best recollection as to whether you got track of the identity of Tiffany and Colburn as being two men that could be met up in getting an inside knowledge of things detrimental to Hooker from Judge Woodward? A. From Judge Woodward?

Q. Yes; whether or no you got those names from Judge Woodward according to your best recollection? A. I had a list of names I submitted to Judge Woodward; I think Tiffany's name was included in that, but I am not certain about that.

Q. Would that be your best recollection,—did you have the list of names upon paper? A. Yes, sir.

Q. Did you submit that list to Judge Woodward in order to find out from him which of the names upon the list would be most apt to furnish information against Judge Hooker? A. Well, they were men likely to be informed for my purposes.

Q. That is hardly a candid answer to my question. Read it.  
(Stenographer reads the question.)

A. No, I won't answer that question categorically. I submitted the whole list to him as to whether these were men——

Q. (interrupting) I am asking that, I want an answer categorically, and I have a right to such an answer.

A. Then I will answer it, no.

Q. Where did you get the list of names that were upon that slip of paper; from whom? A. Well, from my own acquaintance, my own knowledge of men.

Q. You said you had never heard of Tiffany or Colburn; they didn't represent anything more to you than John Doe or Peyer Poe. A. I don't want to be understood in that sort of way.

Q. Had you ever heard of Colburn or Tiffany before you went to Dunkirk? A. I had heard of Tiffany.

Q. From whom? A. I couldn't tell; I have been pretty well acquainted with the people of the State through the matter of politics.

Q. Have you ever been in Fredonia? A. Oh, yes.

Q. Have you ever met Tiffany before? A. No.

Q. Have you ever heard of him at all? A. I don't mean to be understood that way. I had heard of Tiffany.

Q. From whom? A. From men who are active in politics in the State; Sessions.

Q. What men? A. Well, I had heard of him from Loren B. Sessions.

Q. When had you talked with Sessions about Tiffany? A. He is one of the men I met frequently during the period he served as State Senator when I was representing the Eagle.

Q. How many years ago was that? A. Ten or twelve years ago.

Q. Did you remember that 10 or 12 years ago you heard Loren B. Sessions speak about a man by the name of George Tiffany? A. Yes, he was a man active in that end of the county and I think was then very friendly to him because of political relations.

Q. That was 10 or 12 years ago and you recall that name? A. I think probably it came up in various other relations. I was interested a good deal in politics,— ●

Q. (interrupting) I am not asking about that; I appreciate you may be interested in the subject of politics. What I want to know is if ten years after this desultory conversation with Sessions you carried that name in you memory so as to be able to place the identity of Geo. Tiffany? A. Possibly I did.

Q. I suppose possibly you didn't? A. Possibly I did.

Q. Now, you say you told him that you had a paper with a list of names on, that you submitted to Judge Woodward? A. Yes, sir.



Q. And you told me you did not submit that list to him for the purpose of ascertaining who upon the list would be the most likely to furnish you with evidence in regard to Judge Hooker?

MR. COMAN: I submit he did not; that is not a fair question. The question has been absolutely changed, the manner and intent in it.

MR. STANCHFIELD: What is the change in it.

MR. COMAN: Against Judge Hooker you said before.

MR. STANCHFIELD: I beg your pardon, I said detrimental; this time I said in regard to Judge Hooker.

Q. I say in regard to Judge Hooker. Did you answer me no because I incorporated in the former question the words "detrimental" to Judge Hooker? A. Yes, sir.

Q. That is the reason you said no? A. Yes, sir.

Q. I will change it and put in the word in regard to Judge Hooker; this is my question, did you consult Judge Woodward with reference to the names upon that list to find out which of them would be in the best situation to furnish you information in regard to Judge Hooker? A. There may be a small distinction——

Q. (interrupting) I think it was but you made it. A. I made another distinction, you say which of the lists submitted, or rather which of the names on the list would be likely to give me information in regard to Judge Hooker. I submitted which of the names on the list would be likely to give me information on the matters relating to the Dunkirk postoffice.

Q. You knew when you went to him that the Dunkirk postoffice was located within the Congressional District of Judge Hooker? A. Yes, sir.

Q. Had you talked that over with Judge Woodward? A. No, not—Judge Woodward wasn't very communicative upon the occasion of that call; he was willing to talk generally about the

increase of rentals and it was from him that I first learned that the rental of that office had been progressively increased.

Q. Raised? A. Yes.

Q. Now didn't you find from Judge Woodward that Judge Hooker was interested as an owner in the Dunkirk postoffice? A. I think it is probable; my recollection on that point is not very clear.

Q. But that would be your recollection? A. It would be my recollection.

Q. Now do you recollect how many names you had on this list that you took to Judge Woodward? A. Oh, I suppose that there was a dozen perhaps both in Dunkirk and Fredonia.

Q. Now were the names of all of the people that were upon this list names of people who lived either in Dunkirk or Fredonia? A. Yes—I don't know, I think some in Jamestown.

Q. Now who wrote that list? A. I did.

Q. Can you tell now that I have been endeavoring to refresh your recollection, who gave you those names, furnished them to you in the first instance? A. No, I think I got them entirely from my knowledge of the locality.

Q. Tell me the names of others who were upon the list besides Colburn and Tiffany? A. I don't think Mr. Colburn's name was on it at all.

Q. Well, Tiffany's was, you say? A. Tiffany's was. I think that of Mr. Green.

Q. Which Green? A. Fred Green, isn't it, Frederick Green, cashier of the bank; I think Mr. Heffernan of Dunkirk, Mr. Toomey of Dunkirk.

Q. Is that all you can recall? A. Mr. Moore.

Q. Fred R. Moore, or George R. Moore? A. It is the one who was postmaster previous to that time.

Q. Had you ever heard of Postmaster Moore before? A. Arthur Moore, wasn't it? Yes, in that case I had informed myself as to the previous postmasters, put them down, in each town that I visited, the previous postmaster.

Q. Looked it up in some almanac or book of reference? A. Yes, book of reference.

Q. Tiffany completed then the list of names? A. Yes, sir; I think Mr. Mott of Jamestown was on the list also, but I am not sure.

Q. Did you talk with Judge Woodward in reference to the relations between Tiffany and Hooker? A. No; I didn't know them.

Q. Did you know what the first name of Tiffany was? A. That I can't tell you, whether I did or not.

Q. Don't you know whether you had upon this list or not the full name of Tiffany or just Tiffany? A. I rather think it was Tiffany alone.

Q. Now, did you know where Tiffany lived? A. I know he lived in Dunkirk, or in Fredonia.

Q. You know that Colburn also lived in Fredonia? A. I never made Mr. Colburn's acquaintance or had knowledge of him until I visited Fredonia.

Q. Now, the Brooklyn Eagle was conducting a sort of campaign at that time against Judge Hooker? A. Not that I am aware of, I don't mean to say it wasn't.

Q. (interrupting) Did you read the Brooklyn Eagle? A. Like every other newspaper man, it is the last paper I read.

Q. I didn't know whether you read your own product or not? A. The last thing a newspaper man does read is his own newspaper.

Q. You say you don't know whether the Brooklyn Eagle took a stand antagonistic, and has maintained it, against Judge Hooker? A. I don't know that it took a stand antagonistic to Judge Hooker prior to the time I was sent out; I know it had since.

Q. And the motive that set you in operation to go to Fredonia and Dunkirk came from the conversation that St. Clair McKelway told you he had had with Mr. Justice Woodward? A. Yes, I suppose that was the—

Q. (interrupting) Now, did you go to Fredonia first or Dunkirk? A. Dunkirk first of those two places.

Q. You say you went to Dunkirk first? A. Of those two places.

Q. How did you get into touch with Tiffany? A. I went down to Fredonia and inquired where his place of business was and went to see him.

Q. And when and where did Colburn appear upon the scene? A. I think that Mr. Colburn came into the hotel at Fredonia, and I was——

Q. (interrupting) Sent for by Mr. Tiffany? A. I don't know that.

Q. Did he come up and see you, was presented to you? A. Yes, by Tiffany, who was there at the time.

Q. Did Tiffany know you as connected with the Brooklyn Eagle other than from what you told him? A. Yes, he had knowledge of me I understood from what he said.

Q. It wasn't necessary then for you to tell him who you were? A. No, but I did tell it; I rather think he interrupted me at that time by saying, "Oh, yes, I know about you."

Q. Did you infer from what Tiffany said to you that he was expecting you there? A. No, sir; I don't think he was.

Q. Did you notify him in any way you were coming there? A. No, sir.

Q. Did you know whether or no he was in Fredonia? A. I did not.

Q. Then the first conference that took place between you three men occurred in the hotel at Fredonia? A. Between the three men, yes, sir.

Q. Was it there talked over you should go to visit Ball? A. Well, that brings it down to 1904.

Q. Yes, I am talking about January 7th, 8th or 9th, the days you fixed, 1904? A. I presumed that your questions were relating to 1903, the first time I visited.

Q. No, I am talking about this conversation that took place with Ball at Dunkirk in January, 1904? A. Well, I remarked, I said to Tiffany, that I was going to Dunkirk that afternoon and was going to visit Ball and ask him whether he would talk on that subject, especially on the question about returning that money to the United States Government, especially my purpose, and I asked him to go with me.

Q. And asked Colburn to go along too? A. Mr. Colburn volunteered to go.

Q. You have been a newspaper reporter all your life? A. Mainly.

Q. It isn't very often you have required two people to go along with you to aid you? A. No, it might take more sometimes if I could get them.

Q. Usually you go alone, don't you? A. Not always.

Q. Habitually? A. Not when I am in a strange place. I am a stranger, I am very apt to find some means of introducing either by letter or personal attendance.

Q. Even for an ordinary newspaper interview? A. Yes, if there are any difficulties.

Q. Anything where you want a witness around? A. Yes.

Q. You had that underlying feature, didn't you, that you would like to have somebody along— A. (interrupting) No, I don't think I had that thought in mind; I simply would like to have somebody who knew Mr. Ball present me and vouch for me.

Q. You made some remark indicative of the fact that you had been to Fredonia before, in 1903? A. Yes.

Q. When was that? A. It was along in May, I think, the early part of May.

Q. Did you see Tiffany then? A. Yes, that is when I first made his acquaintance.

Q. How did you happen to go to see Tiffany in May, 1903? A. All the time that I was speaking and answering your questions I supposed you were referring to 1903. The conversation

I had with Judge Woodward was immediately following Doctor McKelway's suggestion it would be well to see Judge Woodward before I started out; that was in 1903.

Q. Now, you didn't see Ball in 1903? A. I didn't.

Q. You did see Tiffany? A. I did see Tiffany.

Q. Did you see Colburn? A. Saw Colburn.

Q. In 1903? A. No, I think not; no, I don't think I saw Colburn until 1904.

Q. Who did you see in May, 1903, besides Tiffany? A. I think I saw Mr. Moore.

Q. The postmaster? A. The postmaster.

Q. Now, was there any talk between Moore, Tiffany and yourself then, with reference to Ball's relations with the Fredonia postoffice? A. I don't think so at that time, between Mr. Tiffany, Mr. Moore and myself.

Q. Was there between you and Mr. Tiffany? A. Yes.

Q. Now you found out then as early as May, 1903, that Tiffany was a bitter enemy to Hooker, didn't you? A. It was apparent at once.

Q. Wouldn't it be your recollection he emphasized his enmity with a good deal of profanity? A. No, not profanity.

Q. When you made the remark that the only profane words you can recollect was the word "damn," did you have in mind the judicial construction that damn was not profanity? A. I think I had the thought that the use of the deity makes profanity.

Q. As a newspaper man you had picked up that legal information? A. Probably.

Q. Don't you know, M. Hudson, that Tiffany's conversation, in expressing his hostility towards Hooker was punctuated every few words with profane language? A. I don't.

Q. Well, do you think you would recollect it if he had? A. I think I should.

Q. That was in May, this first conversation took place, 1903? A. 1903.

Q. You didn't see Tiffany again until January, 1904? A. Oh, yes, I did.

Q. When? A. I was in that neighborhood again some two months later.

Q. On the same errand? A. Not then.

Q. You didn't see Ball at that time there? A. No.

Q. Did you become aware in your conversation with Tiffany that Tiffany himself was writing articles for the newspapers hostile to Judge Hooker? A. I wasn't aware of it.

Q. Did you talk with him about it? A. No.

Q. Didn't have any conversation with Tiffany at all in which Tiffany told you that he was writing right along articles for the Buffalo newspapers against Judge Hooker? A. No.

Q. Signing a pseudonym or false name? A. No, sir; I had no knowledge of that fact.

Q. I ask you if he didn't tell you that in substance? A. No.

Q. You were there two months later, in July? A. I think so; it was hot weather.

Q. Did you go there the second time at the instance of St. Clair McKelway? A. No, at the instance of Mr. Evans, that wasn't on this errand at all, it was then connected with the matter of tax assessment.

Q. I am not going into any business that is not germane to this inquiry at all, I am not interested in your private affairs. Now, you were there the third time in January, 1904? A. I was there again in the fall.

Q. Well, did you see Tiffany again? A. Yes, sir.

Q. Anything to do with the Hooker matter? A. Yes.

Q. Who else did you see besides Tiffany? A. I saw Mr. Greene, Mr. Moore, and I saw another gentleman whose name escapes me, who was in charge at the time of the Fredonia Censor; I saw some other gentlemen whose names I can't recollect.

Q. You had no interview at that time with Ball? A. No, sir.

Q. Now it was in January, 1904, when the Ball conversation took place? A. Yes, sir.

Q. Now, didn't you go there to see Ball because his name had been furnished to you specifically as an advisable man to see from Mr. McKelway, based upon the talk he had had with Mr. Justice Woodward? A. No, sir.

Q. Did the funeral that Mr. McKelway told you he had attended with Judge Woodward, in which Woodward had told McKelway that he could find information in Dunkirk, take place before May, 1903? A. Yes.

Q. If your memory is correct? A. Yes.

Q. Have you read, or had read to you, the evidence that Mr. Ball gave here the other day? A. Yes, sir.

Q. Did you notice that Mr. Ball swore you said to him that you had attended a funeral with Judge Woodward, and he had told you you could get information up there. Did you read that? A. I read that, yes, sir.

Q. Can you tell this committee, unless Ball is a mind-reader, how he found out either you or McKelway had attended a funeral with Judge Woodward? A. I can't.

Q. Unless you gave him the information you couldn't account for it? A. Except I told it to other people.

Q. Did you tell that to Ball, or did you tell it to Tiffany in Ball's hearing? A. No, sir.

Q. Now, you still bearing that fact in mind, quite confident that you didn't tell Ball that you had been to a funeral with Woodward? A. I certainly didn't tell him that.

Q. Did you tell him Mr. McKelway had been and had sent you up there? A. No recollection of telling him that.

Q. The one denial is a matter of recollection, the other is positive? A. Yes, because it wasn't so; I had never been to a funeral with Mr.——

Q. (interrupting) But as to whether or no you told him McKelway had attended the funeral and sent you up there, as to that you are not quite certain you say? A. I am not, but my best recollection is I didn't.



Q. But you don't want to make that denial positive? A. Not as positive as the other.

Q. Now, wasn't it a fact in that conversation between you three men, four men, at Dunkirk, that Ball had given back to Taylor a note representing the salary that had been paid him of some twenty-five hundred odd dollars? A. Not mentioned, didn't come out in that conversation.

Q. Wasn't there some talk between Tiffany and Ball as to whether Ball's wife had gone security for him upon that note? A. I have no recollection of anything of that kind occurring.

Q. You don't remember that at all? A. No, sir.

Q. Was there any talk there upon the subject of a defense to that note? A. Not as a matter of defense.

Q. You put it as you recollect it, no matter how I put it. A. That was secured by a mortgage as security and Mr. Tiffany suggested to him that, something in this language, that Judge Hooker had elected the means of repayment of that which Ball owed Judge Hooker and that he ought to stand on it, and that Ball had no right in justice or equity to give that mortgage or any security to Judge Hooker and that he ought to sue for its return. I am not certain, also, he didn't say he would be willing to pay the expense of a lawyer that should be engaged, but that was with reference to a mortgage.

Q. Well, you call it a mortgage, there is no pretense here anywhere in the case, I will say in fairness to you, there was any mortgage? A. I don't know anything about it; that was the rumor that was current at the time I was there.

Q. The only testimony in the case is with reference to a note. Now, do you recall whether, in form or in substance, that Tiffany said that this mortgage, if that is the way you recollect it, could not be collected? A. No.

Q. That it was an instrument of such a character that its collection could not be enforced? A. No, sir.

Q. Well, what reason, unless he said something of that kind, was there for his saying he would be willing to furnish a law-

yer? A. There seemed to be nothing that led up to it, except my bringing the matter to the attention of Mr. Ball and asking him whether it was so, whether he had given a mortgage, that is my understanding of it, of what it was, I understood a mortgage, and he began talking about that mortgage.

Q. I understood you to say a moment ago that Tiffany went so far as to say that he might be willing to pay the expense of a lawyer? A. Yes.

Q. So he could sue to recover it. Now, I am asking you whether he didn't say, so he could defend it? A. No, that isn't my recollection.

Q. Upon the ground it could not—— A. (interrupting) My recollection is his remark was neither in justice or equity could he be called upon to pay any more than he paid, and that he ought to sue for the recovery of the mortgage and that he would be willing to pay the fees of a lawyer to do it; that is my recollection of it.

Q. Is that all of the conversation now you are able to recollect? A. That is about all I can recollect of it; the whole episode wasn't more than ten minutes long.

Q. Have you, Mr. Hudson, had correspondence with Judge Woodward? A. No, I think not.

Q. Haven't you had letters from him? A. I do have a recollection of having had a letter from him, but I don't know now what it referred to.

Q. Would you recognize his handwriting? A. Yes, sir, I think I never had but one, but it was very characteristic.

Q. Is that address upon that envelope in your judgment in his handwriting (showing envelope to witness)? A. Looks very much like it.

Q. Would you say that it was? A. I should say it was.

Q. And is that letter likewise in his handwriting (showing letter to witness)? A. I should say so, looks like it, I don't think I ever had but one.

Q. Well, in your judgment? A. In my judgment it is it.

MR. CARR: The letter and envelope were marked for identification March 31, 1905.

By MR. CUNNINGHAM:

Q. In answer to a question of Mr. Stanchfield's you say the antipathy or enmity of Tiffany was evident at a glance? A. Yes, sir.

Q. Did you notice anything of the same nature in your conversation with Judge Woodward? A. No, sir.

THE PRESIDENT: We will suspend now. The joint session stands adjourned until to-morrow morning at 10 o'clock.

The Senate having returned to the Senate Chamber, Mr. Raines moved that the Senate stand adjourned until 9.50 a. m. to-morrow.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon, the Senate adjourned.

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#### THURSDAY, JULY 13, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. Frank J. Knapp.

The journal of yesterday was read and approved.

Leave of absence for Saturday was granted to Mr. White and Mr. Prime.

The hour of 10 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber to meet in joint assembly.

#### JOINT SESSION—ASSEMBLY CHAMBER.

MR. PRESIDENT: The clerk of the Joint Assembly will read the journal of yesterday.

The Clerk read the journal as directed.

MR. PRESIDENT: If there are no corrections the journal will stand approved as read. We are ready to proceed, gentlemen.

Mr. Stevens read the questions and Mr. Lawyer read the answers.

THE PRESIDENT: What page, Mr. Stevens?

MR. STEVENS: Page 771, the evidence of George E. Tiffany.

GEORGE E. TIFFANY, called by Mr. Coman, and being duly sworn, testified:

DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Tiffany, where do you live? A. Fredonia, N. Y.

Q. How long have you lived there? A. 52 years.

Q. Is that your age? A. That is my age.

Q. What is your business? A. I am an undertaker.

Q. Do you know Justice Hooker? A. I did and I do.

Q. Do you know the last witness, Mr. William C. Hudson? A. I do.

Q. And Albert N. Colburn, of Fredonia? A. I do.

Q. And Frank P. Ball? A. I do.

Q. And do you remember an occasion in January, 1904, when you and Mr. Hudson and Mr. Colburn called upon Mr. Ball? A. I do.

Q. Where did that interview take place? A. With Ball?

Q. Yes? A. At his office in Dunkirk, back room of it.

Q. Did you on that occasion say to Mr. Ball this, or in substance, that if Ball would give up something that would cause Judge Hooker to be removed you would furnish him with a bond that the best lawyer in Chautauqua county wouldn't cost him a cent, that you would furnish him with a bond and he wouldn't have to pay the \$2,500 note? A. I did not.

Q. Were you present during that whole interview in question? A. I was.

Q. Was the name of Judge Woodward mentioned during that conversation? A. It wasn't to my recollection; I am very sure it wasn't.

Q. Did you at any time in the conversation indulge in any pro-

fane or vulgar language or epithets as applied to Judge Hooker or otherwise? A. I might have used the word damn.

Q. Anything further than that? A. Not that I remember; I am not very choice in those expletives.

Q. Will you state to the committee as nearly as you can remember it just what was said by each one of the persons present at the interview? A. Why, we went in the front office to interview Mr. Ball. Mr. Hudson said he wanted to talk to him about the return of the money, about who returned the money to the Government, as we had already seen Mr. Moore and he had said that he hadn't paid back any money and Mr. Hudson wanted to find out, if possible, who done it. This was after we went in the back room. Mr. Ball says, "I have nothing to say." Mr. Hudson questioned him on those lines for some few minutes, Mr. Ball replying every time, "I have nothing to say." The matter then seemed to drop and I then said to Ball, "Frank, Hooker has buncoed you through this whole business; the people of Fredonia have always had a high regard for you; they consider you to be a nice young man and they consider you have been made a tool of in this business and are not particularly guilty; they have great sympathy for you and are willing to do most anything for you. It seems to me that it is time for you to get out from under," or words to that effect. "Mr. Hooker is crooked and everybody knows it, and that you have been made a tool of." Then I said to him, "Frank, given a certain state of facts, which are that you owed Mr. Hooker on a note in an oil deal, that he elected to you how he should receive that debt, got you an appointment and accepted the money from it, that you are under no legal or moral obligations now to repay that debt; and if you have made any such obligation I want to say to you that I think you are a damn fool, and if you will sue Mr. Hooker for the annulment of that obligation, alleging no consideration, I will pay your lawyers." Now that was my conversation with Mr. Ball.

Q. Do you remember whether Mr. Colburn took any part in the conversation? A. Mr. Colburn then said, Mr. Ball replied, "I have nothing to say," to that remark, and Colburn then said,

"Frank, you haven't said anything; if this should come before a grand jury or some other legal body you wouldn't lie about it; you would tell the truth, wouldn't you?" He said, "Yes, I would." We then got ready to leave and he said, "Now, gentlemen, I understand you are friends of mine; I don't want any hard feelings about this; you understand the situation, I simply can't talk." We then went out. We were there probably about ten minutes.

Questions read by Mr. Carr and answers by Mr. Westwood.

CROSS EXAMINATION by MR. CARR:

Q. How long have you known Judge Hooker? A. Ever since he was in Fredonia.

Q. How many years is that? A. I couldn't say.

Q. About how many? A. Twenty, I should say.

Q. Have you been somewhat active in politics up there, Mr. Tiffany? A. Yes, sir.

Q. A republican. A. Yes, sir.

Q. Judge Hooker was a republican? A. Yes, sir.

Q. He was a member of congress from that district for several terms, was he not? A. Yes, sir.

Q. The relations between you and him were friendly? A. Were very friendly; I loved him like a brother.

Q. Up to what time did that love continue? A. When he lied to me and threw me.

Q. When was that? A. About four years ago.

Q. What was the occasion when you say he told you an untruth and threw you? A. It was when he appointed Mr. Taylor postmaster and didn't appoint me.

Q. That is, you wanted to be appointed postmaster? A. Yes, sir.

Q. Was that at the time when the term of Postmaster Moore was about to expire? A. Yes, sir.

Q. And you thought you were entitled to that appointment? A. I did.

Q. But you didn't get it? A. I did not.

Q. And since that time you have been bitterly hostile to Judge Hooker, have you not? A. I have.

Q. You haven't hesitated to say so, have you? A. No.

Q. You have said it repeatedly? A. Yes, sir.

Q. There was nothing else except the matter of the postoffice that occasioned the breach of these relations that existed between you? A. That was all at the time, that occasioned the breach at the time.

Q. Well, I take it when that breach occurred it was complete, wasn't it? A. Well, rather.

Q. You have never resumed the relations that existed before? A. No; we don't sleep together now.

Q. You have never been on friendly terms with him since that time? A. I haven't.

Q. Now when was the first time you met Mr. Hudson in connection with those matters of the postoffice? A. Some time, I should think, some time in 1903, I think; I think it was April.

Q. What time in 1903? A. I should say it was in April.

Q. Had you ever met Mr. Hudson before? A. I never had.

Q. Did you know him? A. I didn't know him personally.

Q. Well, did he come and introduce himself? A. He did.

Q. And said he was Mr. Hudson? A. Yes, sir.

Q. Representing a newspaper? A. The Brooklyn Eagle.

Q. Did he state what the object of his mission was? A. Yes, sir.

Q. Did he state how it happened that he came to you for some information? A. I don't remember that.

Q. Don't you remember whether he did or not? A. I don't

Q. Well, did you give him some information from your point of view? A. Why, I did; yes, sir. I gave him some matter about—

Q. (interrupting) I will ask you about it when I want it. The information that you gave him was from your point of view and that wasn't friendly to Judge Hooker, was it? A. That is entirely proper; that is right, yes, sir.

Q. It was friendly with Judge Hooker? A. No, it wasn't friendly with Judge Hooker.

Q. That is what I want. How long did the interview between you and Mr. Hudson take place then? A. At that time?

Q. Yes? A. How long, I don't remember; probably an hour, maybe an hour; I don't remember that.

Q. Where did you say it took place? A. In my office.

Q. Was anybody else there upon that occasion? A. I don't remember, possibly my father, but I rather think not.

Q. How long was it after that before you had another interview with Mr. Hudson? A. That I can't remember.

Q. About how long? A. I don't remember; I think within some two or three months later; I think he was there again.

Q. Where did that take place? A. I don't remember that. Somewhere, whether it was in the office or the hotel, I don't remember.

Q. One or the other? A. Probably.

Q. Did he come in search of further information on this subject? A. That I don't remember, what he was in search of.

Q. Do you remember whether you gave him any additional information? A. I don't.

Q. Well, when next after that did you see Mr. Hudson? A. I don't remember to have seen him until he came there to find out about the Ball business, who returned the money to the Government.

Q. That was when? A. That was some time in January, I think. The only way I have of fixing it was the interview was published in the Brooklyn Eagle, January 17. ●

Q. What interview? A. The interview he had with Ball.

Q. You read that? A. On January 17; I read that.

Q. Had you been reading the Brooklyn Eagle before? A. Only when I got it once in a while. I asked him to send me that.

Q. That is, after this conversation had taken place with Ball, when you went away, then you wanted Hudson to send you a copy of the Brooklyn Eagle that would contain that interview? A. I don't remember that it was then I asked him. I rather think I wrote him for it.



Q. How did you find out it had been published? A. Oh, I knew it would be published.

Q. How did you know it? A. Well, because he is the reporter upon the paper for that business.

Q. Then you understood when you went down there with Mr. Hudson that it was for the purpose of getting an interview that was to be published in the newspaper? A. No, it wasn't for the purpose of getting an interview to be published.

Q. Didn't you understand it that way? A. No.

Q. Then why did you understand it that way after the interview had taken place? A. He went there for the purpose of getting an interview.

Q. You say you didn't understand he went there for the purpose of getting information in the nature of an interview—— A. (interrupting) Yes.

Q. And yet when you separated that you supposed it would be published? A. Yes, his findings, what he had been finding out.

Q. I mean this interview with Ball, did you suppose that would be published? A. Why, I supposed it would.

Q. Then you understood the purpose was to get information that was to be published in a newspaper in regard to this matter? A. Well, I can't say that; no, I expected, of course, the information that he received would be published.

Q. But yet whether you expected it or not you wrote for a copy of the paper that contained the interview? A. I heard afterwards that the thing was published. I don't know how I heard that, and I wrote for a copy of the paper.

Q. You don't know who gave you that information? A. I don't.

Q. Well, were you active in furnishing information against Judge Hooker in connection with these matters? A. Why, I told Mr. Hudson all I knew.

Q. Did you talk with other people about it? A. Certainly; other people came to me and talked about it.

Q. You furnished them information, didn't you? A. If I had any to furnish I did.

Q. Did you write any articles that were published? A. I didn't.

Q. Did you make any speech or speeches upon the subject? A. We had a meeting there once and I introduced some resolutions and passed them.

Q. When was that meeting? A. I can't tell you.

Q. What year? A. Last year, 1904, I think.

Q. What time? A. I can't tell you.

Q. Was that before or after the occasion of this interview with Ball? A. I should say after; I don't remember.

Q. And was that for the purpose of organizing some sort of a league, something of that kind? A. Something of that kind.

Q. Who was the promoter of that scheme, you? A. Myself, yes, sir.

Q. And you were to be the chief manager of it, weren't you? A. No, sir.

Q. That wasn't your idea? A. No, sir; I absolutely refused to be.

Q. They offered it to you? A. Yes, sir.

Q. And you refused the crown? A. I did refuse the crown.

Q. Your idea was to get these disaffected elements together, wasn't it? A. It was simply a form of getting the whole people together.

Q. Getting the disaffected elements together first and then getting the whole people together afterwards, that was it, wasn't it? A. Possibly.

Q. And at that meeting you made a speech? A. Why, I spoke to those resolutions.

Q. The resolutions were not very friendly to Judge Hooker, I take it? A. I wouldn't call them so, no, sir.

Q. Or anybody else who read them? A. No, sir.

Q. They were not intended to be friendly to him? A. No, sir.

Q. They were intended to be hostile to him, were they not? A. Yes, sir.

Q. They were intended to provoke a hostile feeling against him by whoever read them? A. Yes, sir.

Q. That was your idea, wasn't it? A. I proposed to wake them up to the truth of the business.

Q. What you called the truth of it? A. Yes, sir.

Q. The truth from your standpoint? A. Yes, sir.

Q. Well, at any time after this matter started, did you go to Buffalo and have any interview with a newspaper man? A. Yes, sir.

Q. When was that? A. Now I can't recall the date.

Q. Was that before or after your first interview with Mr. Hudson? A. Oh, it was after the first interview.

Q. How long after? A. I can't say, I can't say when this was.

Q. Was it after the second one? A. Oh, yes.

Q. Then it must have been along some time in the summer or fall of 1903? A. No, I think it was 1904.

Q. You think it was 1904? A. I think so.

Q. Well, now, was it before this interview with Ball? A. I think not.

Q. You think it was after that? A. Yes; but I won't be certain about it.

Q. Your recollection isn't first class in regard to that part? A. Not on that part of it, in regard to dates.

Q. No, about some things, but not all the features of it? A. I remember perfectly the interview; I don't remember the date of it.

Q. What time of the year was it you went to Buffalo to see a newspaper man? A. I think it was in winter.

Q. How long after the occasion of this interview with Ball? A. Well, now, I can't say that; might be a month or two.

Q. Who was the man you first had any interview with upon that subject, newspaper man? A. The first man that we saw was Mr. Joslyn of the News.

Q. The Buffalo News? A. Yes, sir.

Q. You say the first man "we" saw, who were we? A. A committee.

Q. Were you chairman of the committee? A. I think not; I think the chairman of this league was chairman of the committee.

Q. That was the league that you had been instrumental in getting started? A. Yes, sir.

Q. How large was the committee? A. Three, I think.

Q. Who were the other two that went with you? A. Mr. Stearns, William S. Stearns, and Mr. Holcomb, Commissioner Holcomb; now I do recall if there was any other who went on the committee; there was another man, that was Warren F. Brown; he wasn't a member of the committee, but he went with us.

Q. You first came and talked with Mr. Joslyn of the Buffalo News? A. Yes, sir.

Q. Did you state to him what your mission was? A. Yes, sir.

Q. And did you ask him to introduce you to representatives of other newspapers in Buffalo? A. I didn't.

Q. Did you go to other newspapers? A. Mr. Matthews.

Q. And who was the one that introduced you to Joslyn or any one there? A. Nobody.

Q. You knew him? A. No, sir.

Q. How did he know you? A. Why, we introduced ourselves.

Q. What was the mission that you went on? A. We wanted him to send a reporter to Chautauqua county and give us an unbiased report of what he asked and heard, to have him interview different people outside of our league outside of any organization, find out the truth about these matters and publish them.

Q. That is what you said? A. That is what we stated, what we asked of him; Mr. Matthews did so.

Q. Didn't need to interview you or talk to you to find out what your views were? A. Not at all, no; they had leaked out before that.

Q. Had leaked out and run like a river before? A. Well, that is the way about leaks, they grow larger after a time.

Q. This had gone so long it had become quite a volume? A. Yes.

Q. Now, upon this occasion when you went to see Mr. Ball, where did you come in contact with Mr. Hudson? A. I think at the hotel in Fredonia.

Q. What time of day was it when you met him? A. After dinner, after luncheon.

Q. Did you know he was coming? A. I didn't.

Q. What started the conversation between you and him? A. Why, I think I saw him at the hotel and he asked me about this business; wanted to know how to find out about it. I said go and ask Moore and we went to see Mr. Moore.

Q. He asked you about this business, what business? A. What I have spoken of here, to find who had paid back the money to the Government, that Ball had received, that was what he was after and he asked me who to go and see about it and I told him to go and see Moore.

Q. Did you go with him to see Moore? A. I did; I introduced him to Moore.

Q. Any one else go with you? A. No, sir.

Q. Where did you come in contact with Colburn? A. I think at the hotel.

Q. Was he there when you had the first interview with Hudson? A. I think not.

Q. What time in the interview did he show up? A. I think after we came back from interviewing Mr. Moore.

Q. Then Colburn appeared upon the scene? A. Yes, sir.

Q. After you had interviewed Moore who made the suggestion of going down to Dunkirk to see Ball? A. I can't remember that, who made the suggestion.

Q. Did you? A. I don't remember that I did, may have.

Q. Did Colburn? A. I don't think Colburn did.

Q. Do you remember whether Hudson did or not? A. I don't remember who did.

Q. Some one of you three made that suggestion? A. I know Hudson asked me to go down with him and introduce him.

Q. Some one of you three made the suggestion, but you don't know which one? A. No, I don't.

Q. Well, Mr. Tiffany, had you learned enough with regard to Mr. Colburn's sentiments up to that time as to whether he was friendly or hostile to Judge Hooker? A. I knew he was hostile.

Q. That he was hostile? A. Yes, sir.

Q. For how long a time had you known that condition of things to exist? A. Well, ever since this business leaked out first.

Q. What business? A. The crooked business at the postoffice in Fredonia.

Q. About what time was it, if that can be located? A. That was an interview published May 30, I think, 1903, when that appeared in the Brooklyn Eagle.

Q. That is when it was published in the Brooklyn Eagle? A. Yes, sir.

Q. That was the paper that Hudson was connected with? A. Yes, sir.

Q. Do I understand you to say that was the origin of that state of feelings existing up there, this article in the Brooklyn Eagle? A. That was the origin of the intense feeling of a great many people. Of course, there were a few who knew a good deal about this thing before.

Q. That is, you did at all events? A. I knew of it.

Q. Knew it from your standpoint? A. That is the only way I have of knowing anything.

Q. Well, at all events, you three went down to Dunkirk and saw Mr. Ball? A. We did.

Q. You went into Mr. Ball's place? A. Yes, sir.

Q. Where did you find him? A. I think he was behind his desk.

Q. Was he in the front part of this place? A. Yes, sir.

Q. Who introduced Hudson to him? A. I did.

Q. Tell him what his business was? A. I did.

Q. Did you tell him what Mr. Hudson wanted? A. I think I did.

Q. And then some interview took place between Hudson and Ball some talk? A. We went into the back room first.

Q. Whether it was in the back room or the front room, there was some talk? A. It was in the back room.

Q. And you didn't take any part in that conversation? A. At first not.

Q. Did you during the talk between Hudson and Ball? A. I did not.

Q. That is, Hudson first made the attempt on Ball to get information? A. He first made the inquiry.

Q. And tried to get some information from him? A. Yes.

Q. When he failed then you took a hand in it? A. Yes, sir.

Q. And when you failed then Colburn took a hand in it? A. No, I don't think he did; didn't attempt to get anything except tell him the truth.

Q. I suppose that is what he went there for, to get him to tell the truth? A. That is what we wanted him to do.

Q. You didn't recognize anything as the truth except what accorded with your ideas; just answer yes or no? A. That Ball said to me?

Q. Yes. A. Ball didn't say anything, only I won't talk.

Q. Didn't he say he hadn't anything to say? A. No, he said I won't talk.

Q. Is that what he said? A. Yes, sir; he says, "You will have to excuse me, I don't want to talk."

Q. And you took a hand in the matter and you made some remarks that you have testified here with regard to the money? A. Yes.

Q. Where did you get any information the money had been paid back? A. Well, that was—where I first learned that I can't say.

Q. You have learned it? A. I have learned it, yes.

Q. Had you learned he had paid back \$2,500? A. Who?

Q. That Ball had? A. Well, it was rumored that Ball had; it was said currently that Hooker had.

Q. That was the rumor? A. That was the rumor.

Q. It wasn't any rumor that Ball had paid back \$2,500? A. No, that Ball had secured Hooker for the repayment of the money to him and that Hooker had fixed the matter.

Q. In what way had he secured him? A. By a mortgage on grape lands; that was the current rumor.

Q. And when you talked about that you told him that he had been buncoed? A. I did.

Q. You told him that there wasn't any obligation on his part to pay that \$2,500, did you? A. I did; that he was under no legal or moral obligation.

Q. And you made the offer that you would pay the expense of a lawyer, didn't you? A. I think that is what I said; I would pay a lawyer.

Q. Pay a lawyer to do what? A. If he would sue Mr. Hooker for the annulment of the mortgage, I said, as I supposed it was a mortgage then.

Q. Bring an action for the annulment of this mortgage? A. Alleging no consideration.

Q. That was given to secure the \$2,500? A. Yes, sir.

Q. What was Ball to do if you did that? A. He was to sue him.

Q. What was Ball to do so far as this interview between you and Hudson and Colburn? A. There wasn't anything else of it; that is all there was.

Q. Did you make that proposition to him with the idea you would then obtain from him a statement of this matter? A. I didn't; no such thing in mind; I made it in good faith.

Q. Wasn't it made with the view and for the purpose of inducing him to make a statement? A. No.

Q. You went there to get a statement from him? A. Yes, sir.

Q. He hadn't made any statement? A. No, sir.

Q. Then you made that proposition to him? A. Yes, sir.

Q. You say not with the idea of obtaining any statement from him? A. No, sir.

Q. That wasn't in your mind? A. No, sir.

Q. He wasn't to do anything so far as you three men were concerned, if you did that? A. No, sir; I will tell you if you want to know what I wanted.

Q. I am able to ask what I want to know? A. I will tell you what I was—the reason—if you want to know it.

Q. Now, Mr. Tiffany, will you start in and tell me what you said upon this subject to Ball? A. Well, that is a pretty difficult matter to do; I can tell the sense of it.



Q. You can tell all you recollect? A. I can tell practically what I said.

Q. Tell all you recollect in the order in which it came? A. As I say, after Mr. Hudson got through, I says to him, "Frank, I understand that you owe Hooker a debt; that you have paid that debt as Hooker elected you should pay it; that he secured you an appointment and received the money from that appointment; you have already paid this debt and are under no moral or legal obligation to repay it. I also understand that you have given a mortgage to secure the repayment of that debt; if so, I want to say to you you are a damn fool, and, assuming this to be true, if you will sue Mr. Hooker for the annulment of that obligation I will pay your lawyer."

Q. You didn't go there that day along with Hudson for the purpose of telling Ball he was a damn fool, did you? A. No.

Q. You went there and took part in this conversation for some other purpose, didn't you? A. I went there to help Mr. Hudson.

Q. To help Mr. Hudson obtain information from Ball? A. Yes.

Q. Wasn't that it? A. Practically so; to introduce him.

Q. That is the reason you took a hand in the conversation, wasn't it, to obtain that information? A. No, sir.

Q. It wasn't that at all? A. No, sir; we had given that up. I will tell you if you want to know.

Q. No such idea in your mind; you were going to obtain information? A. If you will ask me what I wanted to do, I will tell you.

Q. I beg your pardon, Mr. Tiffany, I will ask such questions as suit me, not you. A. Very good.

Q. Then you had no reason at all to take part in the conversation, had you, if it had been given up with the attempt Hudson made? A. Oh, yes.

Q. You didn't join in for the purpose of aiding him in getting the information? A. Not especially; no, sir.

Q. Did you at all? A. I can't say that I did.

Q. Wasn't that something that was in your mind? A. No, that wasn't what was in my mind.

Q. Well, you talked with different persons in regard to this matter, haven't you? A. Which matter?

Q. In regard to those matters of Judge Hooker? A. Well, now, you say those matters of Judge Hooker, what are those matters of Judge Hooker?

Q. I suppose you know the ones that have been the subject of inquiry? A. Well, now, there has been several subjects of inquiry, if you will specify, I will answer.

Q. One you have already specified. Have you ever talked with Judge Woodward about any of those matters? A. I have talked with Judge Woodward about Judge Hooker.

Q. Since this condition of things, the intense feeling you spoke about having arisen? A. I haven't very recently.

Q. How recently. A. Two years ago, possibly.

Q. A year ago, possibly, was it. A. Well, say yes, in the summer of 1903, I guess.

Q. 1903? A. I think so.

Q. That was after you had the first interview with Mr. Hudson?  
A. That was after it was published in the Brooklyn Eagle.

Q. You and Judge Woodward had a talk upon the subject of some of those matters, at all events? A. Yes, sir.

Q. The Ball matter? A. I don't remember that that came up.

Q. The Fredonia postoffice matter? A. All together, it was all talked over, I don't remember any specific thing.

Q. The Dunkirk postoffice matter? A. The Dunkirk postoffice matter was up.

Q. All of it was talked over? A. We talked it over in a friendly way.

Q. That is, you and Judge Woodward talked it over in a friendly way? A. Yes, sir.

Q. I imagine what you said in regard to it wasn't very friendly to Judge Hooker? A. No, not particularly so.

Q. So in the use of the term friendly you mean between you and Judge Woodward? A. Oh, certainly.

Q. You talked with him more than once in that way? A. I don't remember to.

Q. Where was it that conversation took place? A. On my verandah.

Q. It was up there? A. At my house, at Fredonia, yes.

Q. Do you know who introduced the conversation first? A. I can't remember that.

Q. Did you or did he? A. I can't tell you.

Q. No recollection upon the subject? A. As to who introduced it?

Q. Yes. A. No.

Q. Haven't you talked with him several times? A. I don't remember so since.

Q. Had you before? A. I don't remember to.

Q. That is the only time you remember you ever talked with him upon the subject? A. Yes.

Q. Were you giving him information or was he giving you information? A. Well, I can't say in regard to that.

Q. Were you imparting your information each to the other? A. Might have been swapping it.

Q. I know it might have been, now tell me whether it was or not? A. I can't recollect.

Q. Can't recollect that? A. I can't recollect.

Q. The only thing you can recollect is, you didn't say anything in the conversation that was friendly to Judge Hooker? A. Well, I wouldn't say that I did, I wouldn't want to swear that I did not.

Q. Well, how was the tone of Judge Woodward's conversation, as being along somewhat the same lines of yours? A. Judge Woodward's was more of a sad feeling.

Q. More of a sad feeling? A. Yes.

Q. Yours was a sort of a jubilant feeling then, I take it? A. You may call it something like that.

Q. But did you discover any particular difference between the two, except that you were more jubilant than he was about it? A. Well, now, the Judge expressed himself, if you would like to

know, as being very sorry that such a state of affairs existed, sorry Judge Hooker had ever got in any such business.

Q. Very sorry for the information you were telling? A. No, no; the things had been published.

Q. Did you gather there from the conversation that the things that you told him were news to him? A. Oh, no.

Q. He apparently knew of them, didn't he? A. Already been in the newspapers.

Q. Whether it had been in the newspapers or not, my inquiry is whether you gathered from his conversation, he knew all about it at that time? A. Oh, yes.

Q. Where he got the information from you don't know? A. Oh, no.

Q. Did he say anything about having written to the Postoffice Department in regard to these matters to investigate them? A. I think so, I think he told me how that matter came.

Q. Did he tell you he had written to the Department? A. Yes, sir.

Q. Did he say he had written more than once? A. Yes.

Q. How many times? A. Twice, I think.

Q. Did he say when he had done that? A. No, I don't recall that he did.

Q. At the time when this meeting was held for the purpose of organizing the League, did you state at that time that you had a grievance against Judge Hooker and you were going to get even with him or you would— A. (interrupting) No, that wasn't the way.

Q. You didn't say that to Judge Hooker? A. No, sir; I said.

Q. You didn't say that in substance? A. Oh, I said I had a personal feeling, yes; oh, yes; but I didn't propose to get even with him in that way.

Q. Didn't you say you had a grievance? A. Oh, yes; yes. I stated that very plainly.

Q. Didn't you state that this was for the purpose—this league

business was for the purpose of getting even with him? A. No, sir.

Q. Didn't say that? A. No, sir.

Q. It wasn't in your mind to get even with Judge Hooker in that way? A. No, it was in the interest of a pure deal there, kind of a lick up.

Q. And Judge Hooker was the one that was the real object in your mind when you were getting up the League, wasn't it? A. Well, possibly he might be.

Q. Not possibly, but it was, wasn't it? Just answer me. A. No, I don't think it was, to tell the honest truth.

Q. Who else was there that you were aiming the League at? A. Well, we was aiming at the League to get straight, square politics.

Q. Who else was there that was such a horrible example that the League was in part to be organized to put him down? A. Well, I don't want to go to work and specify a lot of fellows in Fredonia really not hardly a horrible example, but they would vote the Hooker side.

Q. I mean one this was aimed at except Judge Hooker as being politics—— A. The Judge was the head of the business.

Q. Now, you say that was what year that was organized? A. I should say 1903; for the reason——

Q. What has become of the League? A. It is still there.

Q. Well, has it arisen to the dignity of a majority yet? A. Oh, yes.

Q. And controls the town now? A. Well, it controlled two village elections pretty thoroughly.

Q. When? A. This last one and a year ago.

Q. Who was the candidate of the League in this last village election? A. Well, I really don't know. As I told you, I have not been connected with it at all.

Q. Didn't you vote along with the League in the last election? A. I voted; yes.

Q. Didn't you vote with them on that side? A. Yes.

Q. And did you vote for them? A. No, I voted on that side; yes—and the fellows I voted for happened to be elected some way or other.

Q. And did you vote for them? A. Yes, sir.

Q. And can't you tell me who was elected president of the village on your ticket? A. He was on both tickets.

Q. Who? A. George R. Moore, this gentleman (indicating).

Q. And he was on both tickets? A. Yes, on both tickets; but he, by the way, is a democrat.

Q. Yes. And were there two tickets of the trustees? A. Yes.

Q. And different men on the tickets? A. Yes, sir.

Q. One representing this League, and the other representing what? A. Well, you can hardly tell what they do represent; they represented the ring.

Q. Who were the ones that were trustees on the League ticket? A. Well, there was Harry Danker, he was elected, and Mr. Slatt, and I forget who the other one was.

Q. And those were all elected? A. Yes.

Q. Did you vote for them? A. I did.

Q. For all of them? A. Yes, sir.

By MR. COMAN:

Q. Just a single question. What was your purpose in telling Mr. Ball that you would pay a lawyer? A. If I could have induced Ball to sue Hooker for the annulment of that mortgage it would necessarily have made a break between Ball and Hooker; that was my object. The truth would then have been told.

By MR. CARR:

Q. That is to say, if that was done then you thought Ball would tell the story, that was your notion of the truth? A. I thought that Ball would tell the truth.

Q. Would tell the truth as you thought it ought to be? A. I thought he would tell the truth.

Q. The truth as you understood it? A. I thought he would tell the truth.

Q. As you understood it? A. As the truth should be told always.

Q. According to your idea of the transaction? A. Oh, no; of the truth.

Q. Well, did you suppose that if there was a breach between him and Judge Hooker that he would tell a story that was favorable to Judge Hooker? A. Well, I didn't think he would, no; I don't think he could.

Q. You expected if the breach came that he would tell a story that was adverse to Judge Hooker, didn't you? A. Certainly. Because I thought if he told the truth it wouldn't be.

MR. CARR: I move to strike out the last remark.

By MR. WHITNEY:

Q. So you say your difficulty arose over the postoffice appointment? Did you have any statement in writing from Judge Hooker with reference to this appointment? A. Oh, Lord, no.

Q. Then if you had received this appointment— A. I had been chairman of his committee in 1886.

Q. If you had received the appointment you assume your relations with him would have been friendly now, would they? A. Any more than considered we were always friendly until maybe this thing came out that he threw me.

Q. If you had received that appointment you would have assumed your relations would have been friendly? A. I assume so, yes, because I assume that this thing, of course—no, they wouldn't have been friendly because this thing would have had to come out. I don't stand for that kind of crook business.

By MR. CAHN:

Q. You have been stating right along something about a mortgage sale on land. You don't know that such a mortgage ever existed? A. I said assuming to Ball.

Q. As a matter of fact, you don't know whether— A. I don't know about that; no, sir.

Q. There is no record evidence of such—— A. There isn't any record, but that was the current report at the time.

Q. You also made a statement that Ball had elected how he should be repaid—that is only rumor—— A. That Hooker elected.

Q. That Hooker elected? A. Yes.

Q. That was only rumor? A. I told Ball, assuming these facts to be true.

Q. You didn't have any evidence as to their truth? A. No, sir; simply rumor.

Q. The same applies to what you said to Ball May 30 in the Brooklyn Eagle to your own satisfaction—— A. I meant that the things were printed at that time.

Q. And there was no other evidence except the papers as to it? A. No, except what finally came out in the Bristow report.

Q. Signing a pseudonym or false name? A. No, sir.

Q. You haven't any record—— A. That was what forced the Bristow report.

THE WITNESS: I must insist——

By MR. CARR:

Q. All then, that you meant to say, was that you had heard certain rumors going around the neighborhood? A. Oh, I heard the stories; that was it; yes.

Q. That is that there was a rumor that you had heard that he had given Judge Hooker a mortgage for \$2,500, to secure that money that was paid back; that was a rumor, wasn't it? A. Well, now, it came to me pretty straight, you know.

Q. Just tell me—you have already answered it to me—you mean that was a matter of rumor? A. I didn't know it of my own knowledge. I have said so right along.

Q. There wasn't anything else except the matter of the rumor? A. No, sir.

Q. Now, who did it come to you from? A. Well, now, I wish you wouldn't ask me that question.



Q. Well, I do ask it? A. I wish you wouldn't do it.

Q. I ask who did this information come to him from? A. (continuing)—for I would like to explain to you personally because I do not want to injure Mr. Ball's relations with other people. This came from people who were very friendly to Ball and his wife; and I don't want to bring their names into this thing—it is impossible to get them here; they don't live in the State. If you insist on it, of course, I will tell it.

Q. What possible harm can it do anybody? A. Well, I don't want to rupture the friendship between Mr. Ball and these people.

Q. I ask who he got that information from? A. I got it from Everett S. Potter, if you want to know.

By MR. COMAN:

Q. Edwin S. Potter was the station agent? A. Edward P. Potter.

Q. Edward P. Potter was the station agent at Fredonia at that time? A. At one time.

Q. He is now a resident of—— A. Kokomo, Indiana.

By MR. CAHN:

Q. Was he a friend of Mr. Ball's? A. And of myself; an intimate friend; he had—he and his wife were very, very intimate friends of Ball and his wife and were also intimate friends of my wife and myself.

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By MR. CARR:

Q. Didn't I understand you to say when I cross-examined you that it was a matter of rumor? A. Did I say—yes.

Q. You don't mean to say then that it was conveyed to you alone and that nobody else talked about it? A. Well, the ones that I heard it from, I say; I don't know where anybody else heard it or anything about it.

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Q. But it was a matter of common talk? A. Common talk.

Q. You don't know where they got the information from? A. Of course not.

Q. You didn't give it to them? A. I did not—not at first—I didn't hesitate to tell about it later.

MR. STEVENS: At page 798, the testimony of Albert N. Colburn.

The testimony of Albert N. Colburn was read, Mr. Stevens reading the questions and Mr. Lawyer the answers on the direct examination, Mr. Stanchfield and Mr. Hoyt reading the cross-examination.

ALBERT N. COLBURN, called by counsel for Committee, being sworn, testified as follows:

DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Colburn, have you heard the testimony in this investigation of Mr. Hudson and Mr. Tiffany? A. I have.

Q. Do you remember the occasion referred to by them when you called upon Mr. Ball at his office in Dunkirk? A. Yes, sir.

Q. About when was that? A. Well, about a year ago, a little over, I think, in January.

Q. January, 1904? A. I think that is right.

Q. Did you go to Mr. Ball's office, in Dunkirk, in the company of Mr. Hudson and Mr. Tiffany? A. I did.

Q. Upon that occasion did Mr. Tiffany say to Mr. Ball that if he, Ball, would give up something that would cause Judge Hooker to be removed, he, Tiffany, would furnish Ball with a bond that the best lawyer in Chautauqua county would not cost him a cent and that he wouldn't have to pay the \$2,500 note? A. No.

Q. Did Mr. Hudson in the course of that conversation say anything about Judge Woodward, or mention his name? A. No, sir.

Q. Did Mr. Tiffany, in the course of that conversation, use any profane, vulgar, or obscene language in referring to Justice Hooker? A. No, not unless "damn."

Q. Did he use the word "damn"? A. He did.

Q. Now, Mr. Colburn, you may tell the committee just what did take place at that interview and what each of the parties to the interview said, so far as you can recall? A. Mr. Tiffany introduced

Mr. Hudson to Mr. Ball. Mr. Hudson said to Mr. Ball "I would like to speak to you in regard to the refunding of the moneys paid to the department at Washington." Mr. Ball invited us out into the back room; his office is in a drug store; Mr. Hudson asked him after we had got out there, I think he said to him first, "I understand that the money as paid to you for salary in the Fredonia postoffice has been refunded to the government; I'd like to find out who paid it, whether you or somebody else." "Well," he says, "gentlemen, I am sorry, but I won't talk," or "can't talk" or "you must excuse me, I won't talk." He asked him several questions on that same line and got about the same reply, that is, "I won't talk." Then Tiffany broke in and began to talk to Frank. He says, "You had a position here in the postoffice, you owed Hooker, and you have paid him out of your salary just as he elected to have it paid; you don't owe him a cent now, and I know that you have obligated yourself to repay him and you are a damn fool. If you will begin an action to annul that obligation, alleging no consideration, I will pay your lawyer and it won't cost you a damn cent." I think the word "damn" was put in several times. He denounced Hooker in language I couldn't give you; forgot; I know he denounced him good and proper, and Frank says, "Well," he says, "I refuse to talk, I shan't talk." I think that was about the sum and substance of Tiffany's talk with him and I think that the last and only time that I spoke to Frank or said anything was when we turned to go out I says, "Frank, if you were brought onto the stand in a trial before a legal tribunal, you would tell the truth, wouldn't you, you wouldn't lie?" He says, "Yes, sir, I would."

Q. And did you then go out? A. Yes.

Q. And have you now told the substance of the conversation?

A. I have, except the denunciation of Hooker; I couldn't pretend to say just what that was, it was a good round one.

## CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Mr. Colburn, have you ever known Hudson before the occasion when you went over there? A. No, sir.

Q. Had Tiffany, so far as you knew? A. Not that I know of.

Q. So that so far as the question of knowledge goes, Hudson was a stranger to both you and Tiffany? A. So far as my knowledge goes; yes, sir.

Q. Now, when you first saw Mr. Hudson, didn't you have some conversation with him as to the reason why he was at Fredonia? A. I think, possibly, yes; I must have, because I knew that he was a newspaper correspondent, or was told so.

Q. And you knew that newspaper correspondents are usually traveling around in search of information upon some matter in which they were interested? A. Yes, sir.

Q. Now, don't you think, or wouldn't it be your recollection, that you found out from Mr. Hudson, in the progress of that conversation, that he was there to investigate Judge Hooker's relation to and connection with the Fredonia postoffice? A. Well, I don't know; I don't know whether it was rentals or Fredonia postoffice.

Q. I haven't used the word "rentals?" A. I say I don't know; I couldn't tell; I think that the first information I had was in regard to rentals, but I don't know whether I got it from him.

Q. I haven't alluded to the subject of rentals or appointees, but simply if you didn't find out that he was there in reference to Judge Hooker's connection with the Fredonia postoffice? A. I think so; I think so.

Q. Now, you talked that subject over with him, didn't you? A. Why, I think the talk was largely Tiffany and Hudson, and perhaps I was a listener.

Q. Well, whether you took part in it or listened, I don't care. A. Yes, I think so.

Q. Who brought up Ball's matter? A. Well, I can't tell you whether it was Mr. Tiffany or Mr. Hudson.

Q. Wasn't Hudson already furnished with Ball's name? A. I think so.

Q. And wasn't his one inquiry on that subject addressed to either of you to ascertain where you would be able to find Ball? A. Well, I don't know as he asked me; I presume likely.

Q. Well, either you or Tiffany in your presence? A. I don't know.

Q. Did you notify Ball that you wanted to see him before you went to his office? A. No, sir.

Q. He was then in Dunkirk? A. Yes, sir.

Q. And you went there by trolley? A. Yes.

Q. Now, have you read over Mr. Ball's evidence? A. I have had it read to me; heard it read.

Q. How long ago? A. Last Friday morning, I believe.

Q. You recall Mr. Coman asked you, among other questions, upon the witness stand, whether or no Mr. Hudson mentioned Judge Woodward's name in his talk with Ball? A. I guess you are a little mistaken; I haven't been on the stand before.

Q. I say Mr. Coman asked you on the stand, I mean right here, whether Hudson mentioned Judge Woodward's name in his talk with Ball, and you said no? A. I think not; no.

Q. Now, do you remember, in reading Ball's evidence, that Ball said that Hudson said to him that Judge Woodward had been attending a funeral in Brooklyn, as a pallbearer with him, and that there the subject came up of the Fredonia postoffice and Dunkirk postoffice matters? A. I remember the testimony of Ball's, yes, in that respect.

Q. And do you also recall that here on the stand the other day Mr. Hudson said that while he was not the one that had been attending this funeral as a pallbearer, but that his chief, Mr. McKelway, was the one who had been at the funeral as pallbearer with Judge Woodward? A. Yes, sir.

Q. How can you account for Ball's having any knowledge or any connection between either Hudson or McKelway and Woodward at the funeral in Brooklyn in which this matter was brought up, unless Hudson mentioned it in that talk?

Q. Well, just account for it; just give your explanation of it?

A. Why, talk on the streets in Fredonia after Mr. Hudson had been there.

Q. Well, what had that to do with going to a funeral with Judge Woodward in Brooklyn; if it wasn't mentioned in your conversation, how would it be talked upon the streets of Dunkirk or Fredonia afterward? A. Well, I never heard of it until afterward.

Q. Well, you might be mistaken in saying that that subject wasn't talked over between Hudson and Ball? A. I don't know; I couldn't have been mistaken.

Q. You could not be mistaken? A. No, not at that interview.

Q. No more than you could be mistaken when you swore positively that Tiffany didn't use any vulgar, profane or obscene language in that conversation; you could not be mistaken about that, either, I suppose? A. I recall no——

Q. No, no, that ain't what I am asking; you couldn't be mistaken in that respect either? A. I could not.

Q. You tell me what you meant when you said he roundly denounced Judge Hooker; you use his language; just give it to us? A. I cannot do it.

Q. Well, why not; was it so profane that you couldn't state it? A. Oh, no.

Q. Well, then, tell it? A. I can't.

Q. Well, give us some of it? A. I can't even do that.

Q. Well, what is the matter with your memory when it gets on to something that may affect the credibility of Tiffany; you evidently are in the prime of life, and you have a good memory, haven't you? A. Not very.

Q. And you used the word "denounced," and still can't tell me a single word that enters into your use of that word? A. I cannot.

Q. Well, what language did you have in your mind when you fashioned with your lips the word "denounced?" A. I have heard Tiffany denounced so many times that I can't tell you just what.

Q. No, no, you used this word "denounced;" now, what words had you in your mind that caused you to frame "denounced?"

A. I had none.

Q. You don't know? A. No.

Q. Well, you do sense, Mr. Colburn, that the word "denounced" is a pretty emphatic and a strong term? A. Yes, sir, I do.

Q. And people don't ordinarily use it unless they have got something in their mind that, from their own point of view, justifies its use; isn't that true? A. Yes.

Q. And you can't give us any language at all that you had in your mind that caused you to use that term? A. No, I can't.

Q. Well, now you heard Tiffany and Hudson say here that you were among the hostile elements to Judge Hooker? A. I don't think I did; no.

Q. You didn't hear them both say that, that you were hostile to Judge Hooker also? A. Well, I don't understand it so; no, sir.

Q. Well, were you at that time, or were you not? A. I was not hostile to Judge Hooker.

Q. Are you on friendly terms with him? A. Friendly, yes.

Q. And was that true at the time when you went to see Ball? A. Yes, sir.

Q. Were you requested by Judge Hooker to go and see Ball? A. No, sir.

Q. Did you go there in his interests? A. No, sir.

Q. Did you know that Tiffany was a bitter personal enemy of Hooker? A. I did.

Q. A disappointed, disgruntled aspirant for office, that you knew? A. Disappointed; yes, sir.

Q. Well, why not disgruntled?

MR. FISH: Perhaps he don't understand.

Q. I am going to find out. A. Angry rather than disgruntled.

Q. Well, angry; I will take your expression for it then; you were not at all interested in Tiffany's row or fight? A. Not at all.

Q. In what capacity do you think you went there? A. Curiosity.

Q. That took how much of your time, half a day? A. Oh, an hour and a half.

Q. What is your occupation? A. A miller.

Q. A reasonably busy man? A. Not very.

Q. Got plenty of leisure? A. I have.

Q. In which to gratify your curiosity along these lines? A. Somewhat, yes.

Q. Now, when you went over to see Ball, as I recollect it, your parting shot to him was "Frank, if you were called upon to witness stand I suppose you would tell the truth? A. Before a legal tribunal.

Q. Well, illegal or legal, I don't think you said a legal tribunal? A. I did, because I believe that at that time the Bar Association had taken this up and witnesses wouldn't be under oath.

Q. Well, then you are quite certain you injected the word "legal?" A. I think so.

Q. If he was called before a legal tribunal you thought he would tell the truth? A. Yes. I says "Frank, if you were called upon to testify before a legal tribunal you would tell the truth, you wouldn't tell a lie, wouldn't you? He says 'Yes, sir.'"

Q. Didn't you think he would tell the truth before a tribunal, legal or illegal; did you think that would make any difference about it, or did it? A. I don't know.

Q. Now if you weren't hostile to Judge Hooker will you kindly tell this committee why you asked him if he would tell the truth if he were brought before a legal tribunal? A. Ball?

Q. Ball. A. I, as a citizen, felt,—

Q. No, no, I just ask you why you make that remark.

MR. COMAN: Isn't he answering?

MR. STANCHFIELD: Not as a citizen, I felt, that didn't strike me that was an answer; he can go on if you think so.

THE WITNESS: Well, as a fellow townsman.

MR. STANCHFIELD: People sometimes differentiate between what they would do as a citizen and what they would do as a man.



Well, as a friend of Ball, and people, or thinking myself, that an investigation by the Bar Association, without any power of compelling witnesses to testify under oath, wouldn't be as satisfactory to the public to the village of Fredonia, and a witness could not be made to tell anything that he didn't want to tell.

Q. That is, it would not be as satisfactory as it would be before a tribunal that had compulsory power? A. That was my idea, I presume, what I had in mind when I asked the question.

Q. That is what you had in your mind? A. That is what I had in my mind, yes.

Q. Then it wasn't, as you told me a moment ago, because you were skeptical about Ball's telling the truth when he wasn't under oath? A. I don't think I told you that.

Q. Didn't mean to convey that impression? A. No, sir.

Q. Now, Hudson, if I understand you, started this conversation? A. With Ball, at the interview?

Q. Yes. A. After the introduction, yes.

Q. And I notice, that all the way through that talk you keep speaking about the word "obligation" that rumor had it, that Ball had given Hooker; do you recall the fact that that is the word you had used? A. I don't know whether that is what I used or——

Q. That is the word you have used right along? A. Yes, an obligation would mean the same——

Q. Now never mind discussing meanings; that is what you have used right along? A. Yes.

Q. You recall being interviewed by a newspaper reporter from Buffalo right after Ball gave his testimony here the other day, at Fredonia? A. I haven't seen any newspaper reporter that I know of.

Q. Do you take the Buffalo Express? A. Yes, sir.

Q. Didn't you see the next morning after Ball gave his version of this talk with you, a purported interview in the Buffalo Express with you and Tiffany? A. I guess I did, yes.

Q. Well, you had the interview which was stated in there to

have occurred, didn't you? A. I don't know of talking with any reporters; I don't know what the reporters are.

Q. Then that was made out of whole cloth? A. Well, I can't tell you.

Q. So you have discovered that newspapers can lie? A. No, I don't know that——

Q. Now, what I am getting at, that interview stated that both you and Tiffany denied that in this talk you had agreed to guarantee the payment of a note that Ball had given to Hooker, and you use here the word "obligation;" now, isn't it the fact, that in all your talks there with Hudson and Ball and Tiffany and yourself, that the word was "a note?" A. I couldn't tell you.

Q. Well, you wouldn't say but what it was? A. I don't know that we had any conversation in regard to the note.

Q. And you didn't have any conversation in regard to a mortgage? A. I don't think so, until after we came away from Mr. Ball's.

Q. Well, that is after you had left? A. Yes, I think so.

Q. I am not interested in what you said between yourselves, after you left him; I mean during the time you were talking with Ball. Now in that conversation you tell us that Tiffany asked Ball to bring a suit, alleging want of consideration, to annul the obligation you had assumed he had given Hooker; is that right? A. I didn't assume that he had given it to Hooker.

Q. I mean you all assumed it, didn't you? A. Oh, no, I didn't know anything about it until after he sprung it.

Q. You didn't think he had given Hooker any obligation, then? A. I didn't know anything about it.

Q. Well, you told Mr. Coman that Tiffany said in the talk, that if he would bring an action himself, alleging want of consideration, to annul the obligation that he had given Hooker, that he, Tiffany, would pay the expenses of his lawyer? A. And it wouldn't cost him a damn cent, I think that is what—that is all.

Q. Well, wouldn't cost him a damn cent and that he would pay the expense of his lawyer? A. He would pay for his lawyer

and it wouldn't cost him a damn cent; now I think that that is it.

Q. Now, didn't he say in the same talk, Mr. Colburn, that he wouldn't have to pay this note or obligation? A. No.

Q. If he would bring this suit? A. He said previously, he says, "You have paid it once; you are a damn fool," or "a big damn fool," I can't tell which, "if you ever pay again, and if you will bring this action to annul this obligation I will pay your lawyer and it won't cost you a damn cent." That is as I remember it.

Q. Well, if you are left to yourself to give your version of this conversation, you have it pretty well punctuated with damns? A. I presume I haven't put in half as many as he did.

Q. Now, you bear in mind that you tell me, that you are friendly with Judge Hooker and have been right along; haven't you been a regular correspondent of the newspapers trying to fan the flame of turmoil that had been stirred up against him in that locality? A. Yes, at one time.

Q. Yes or no? A. Yes, not recently.

Q. To what newspaper have you written articles in reference to Judge Hooker? A. A Jamestown paper, I think, is the only one.

Q. And as a friend of Judge Hooker, did you join this famous league that Mr. Tiffany organized? A. No.

Q. Weren't you a member of it? A. You said, as a friend of Judge Hooker.

Q. Well, but you said you were? A. I am friendly, I think, with Judge Hooker.

Q. Well, did you join that league? A. I joined the league, yes, sir.

Q. And did you contribute \$50 towards its maintenance? A. No, sir.

Q. How much did you contribute? A. About \$4, I believe.

Q. You got off cheap. Now the league called the mass meetings to take action in reference to Judge Hooker's connection with these matters, didn't it? A. Yes.

Q. And did you attend it? A. I think so.

Q. And was Mr. Tiffany there? A. Yes, sir.

Q. Did he preside? A. He was the man who called the first meeting to order, I think.

Q. And you were there and one of those who ratified by your vote or voice the action of Tiffany? A. I did.

Q. All that time as friendly, I assume, to Judge Hooker, as you swear under your oath as a man, that you are now? A. I think so; yes, sir.

MR. STEVENS: Page 322, the bottom of the page, I offer in evidence, Mr. President, a certified copy of the judgment roll in the case of Charles Wirtner against Daniel Scannel, as mayor of the city of Dunkirk, in the Supreme Court of Chautauqua county. The judgment was granted at the Erie Special Term, January 21, 1903. The judgment roll filed and judgment entered in Chautauqua county on the 24th day of January, 1902, at 9 o'clock a. m.

THE PRESIDENT: It will not be read in.

MR. CARR: Mr. President, before you render a decision of this kind permit me to call your attention and that of this body to the fact that upon this judgment roll is based the charge that the defendant here was guilty of obtaining a corrupt and wicked judgment, so that we think on our side that the judgment roll itself ought to be read to the members of the joint assembly that are here.

MR. STEVENS: In that position we concur.

THE PRESIDENT: The judgment roll will be read.

MR. CARR: It may be somewhat tedious, but after all, Mr. President, you will appreciate our position, and I think the members of this assembly will think so also.

THE PRESIDENT: You may proceed, Mr. Stevens.

MR. STEVENS: I will, with the permission of the other side, omit some formal parts and if there is any objection I will at once read what I have omitted.

MR. CARR: Read the title once, Mr. Stevens, and then that will be sufficient.

MR. STEVENS: A very proper suggestion.

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL as Mayor of the city of Dunkirk, JACOB P. GROESCH as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON, and JAMES C. RUSSELL as members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

STATE OF NEW YORK, }  
COUNTY OF CHAUTAUQUA, } ss.:  
CITY OF DUNKIRK. }

W. J. EVANS, being duly sworn, deposes and says that he is over twenty-one years of age; that deponent personally served the annexed order to show cause, summons and complaint, injunction undertaking, etc., in the above entitled action, on the following named defendants therein mentioned: Paul Weiss, Timothy Hogan, Frank D. Matteson, James Holstein, Robert McKay, George E. Paxton and Lester F. Stearns, at various places in the city of Dunkirk, by delivering to and leaving with each of said defendants personally true copies of annexed papers, and deponent per-

sonally, of his own knowledge, knew the persons so served to be the same persons mentioned in above mentioned papers as defendants herein.

W. J. EVANS.

Sworn to before me, this 20th day of }  
January, 1901.

THOS. H. LARKINS,

Notary Public.

MR. STEVENS: Which I take to be a mistake, because I think it is before the commencement of the action.

MR. COMAN: It is not a mistake, but an error in the affidavit.

ERIE COUNTY, ss.:

Thomas H. Larkins, being duly sworn, says he served personally the defendants in the above entitled action, Daniel Scannell, Mayor of the City of Dunkirk, and Jacob P. Groesch, City Clerk, by delivering to and leaving with them the summons, complaint, affidavits and injunction order, etc., on the 23rd day of December, 1901, at Dunkirk, N. Y.; service upon the City being by service upon the Mayor as such.

THOS. H. LARKINS.

Sworn to before me January 21, }  
1902.

IRVING F. CRAGIN,

Notary Public in and for Erie County.

MR. CARR: Mr. Stevens, I suppose it may be taken, I make the suggestion so that there will be no question in regard to it later, that there isn't any proof in this judgment roll of any service of any papers upon Warren B. Hooker.

MR. STEVENS: I understand from a personal inspection of the judgment that this is a correct copy of all there is in the judgment roll.

MR. CARR: That is the only proof of service of papers upon anybody, is it not?

MR. STEVENS: All that I know anything about.

THE PRESIDENT: The judgment roll speaks for itself.

MR. CARR: I thought we might convey the knowledge to the members of the joint assembly that there was no personal service upon Judge Hooker in that way.

MR. ROGERS: Mr. Stevens, you didn't answer the question, is there any evidence of other proof of service in the roll?

MR. STEVENS: I know of none, sir. I intended to answer this was a transcript of the judgment roll. I intended to be understood that would settle the whole matter.

MR. COMAN: Mr. President, Judge Hooker appeared in this action by an attorney.

MR. CARR: No question about it.

MR. COMAN: That fact should be stated.

MR. CARR: That will appear in the judgment roll.

THE PRESIDENT: The judgment roll speaks for itself and is being read.

MR. STEVENS: The next paper in the roll is the temporary injunction. I omit, Mr. Carr, the preliminary portion. There is no necessity for reading it, and I will omit that if you concur.

SENATOR BRACKETT: Granted by whom?

MR. STEVENS: I will read the final portion of it.

(Mr. Stevens read the last two paragraphs. The complete paper is as follows):

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## NEW YORK SUPREME COURT.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL as Mayor of the city of Dunkirk, JACOB P. GROESCH as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES A. HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON, and JAMES C. RUSSELL as members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

It appearing satisfactorily from the complaint in this action, duly verified, also the affidavit of Charles J. Wirtner, a citizen, resident and taxpayer of a domestic municipal corporation, the city of Dunkirk, defendant above named, that the plaintiff in his complaint demands and is entitled to a judgment against the defendants, restraining the commission or continuance of the acts hereinafter specified and enjoined; also that grounds sufficient exist for this injunction, which are that the defendants, the common council, the mayor and the clerk of the city of Dunkirk, the city of Dunkirk and Lester F. Stearns and Warren B. Hooker, are about and intend to make and enter into a contract, lease or conveyance, whereby the estate and property of the city of Dunkirk will be wasted and injured, and particularly the following described real estate of said city of Dunkirk, to-wit: all that parcel of real estate situate in the city of Dunkirk, county of Chautauqua and State of New York, lying and being along the north line of what is known as the city hall property and being fifteen (15) feet in width, running from Central avenue easterly to the west line of the city hall building, and ten (10) feet in width, running from



said west line of said city hall building east to Lynx street, thereby collusively alienating said property and diverting the same from the lawful municipal use and benefit of said city of Dunkirk, without authority and unlawfully and wrongfully, to the private use and benefit of said defendants, Lester F. Stearns and Warren B. Hooker and their successors, to the injury and damage of said city of Dunkirk two thousands dollars; now, therefore, the defendants, and their attorneys, counselors, servants, agents and assistants are and each and every one of them is hereby ordered and enjoined, under the penalties by law prescribed, that he, they, and each and every one of them do absolutely desist and refrain from making, executing and delivering, entering into and accepting the lease or conveyance above referred to, or any lease, deed or conveyance of the described real property of the city of Dunkirk or any part thereof, or of any part of the real property of said city of Dunkirk in pursuance of the resolution of the common council of the city of Dunkirk set forth and described in the complaint herein, until the further order of this Court in the premises.

It is further ordered that the defendants show cause at a special term of this Court duly appointed to be held at the city and county hall in the city of Buffalo, in and for the 8th judicial district of the State of New York, on the 30th day of December, 1901, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why this injunction should not be continued during the pendency of this action.

Let copies of this order be served on the above-named defendants, Daniel Scannell as mayor of the city of Dunkirk, and Jacob P. Groesch as clerk of the city of Dunkirk, and either the defendant Lester F. Stearns or Warren B. Hooker on or before December 26, 1901.

Dated December 21st, 1901.

DANIEL J. KENEFICK,  
Justice Supreme Court.

MR. STEVENS: This injunction order recites that it was made upon the complaint in the action. Next follows the undertaking given by the plaintiff in the manner prescribed by statute in a case of this character. I understand there is no necessity for reading that.

MR. CARR: No necessity for reading that.

MR. STEVENS: And the acknowledgments and the regular approval of the same.

MR. CARR: That was approved by Judge Kenefick.

MR. STEVENS: Next, on page 329 is the affidavit of Mr. Wirtner used upon the application. I understand there is no necessity for reading it.

MR. CARR: No occasion for it.

MR. STEVENS: Next follows the summons in the action which gives the title of the action, is in the statutory form and the venue is laid in the words following: "Trial to be held in the county of Chautauqua.

THOS. H. LARKINS,

Plaintiff's Attorney,

Office and P. O. Address, 228 Central avenue, Dunkirk, N. Y.

Dated this 19th day of December, 1901."

The papers referred to by Mr. Stevens and which were not read in full are as follows:

## SUPREME COURT.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL as Mayor of the city of Dunkirk, JACOB P. GROESCH as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES A. HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON and JAMES C. RUSSELL as members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

The above named plaintiff is about to apply for an injunction herein restraining the defendants from wasting and injuring property of the city of Dunkirk and from disposing of same for private purposes and for other than public and municipal purposes as therein particularly mentioned.

Now, therefore, we, Dominick Schmatz, residing at No. 23 West Talcott street, in the city of Dunkirk, N. Y., by occupation a merchant, and Nellie T. Fields, residing at No. 333 Lion street, in the city of Dunkirk, N. Y., by occupation a housewife, do hereby, pursuant to statute, jointly and severally undertake that the said plaintiff will pay to the said defendant so enjoined, such damages not exceeding the sum of five hundred dollars, as they may sustain by reason of such injunction, if the Court finally decides that the said plaintiff was not entitled thereto; such damages to be ascertained by a reference, or in such other manner as the Court may direct.

CHARLES J. WIRTNER, L. S.

DOMINICK SCHMATZ, L. S.

NELLIE T. FIELDS, L. S.

Dated at Dunkirk, N. Y., this 25th day of December, 1901.

STATE OF NEW YORK, }  
County of Chautauqua. } ss.:

On this 20th day of December, 1901, before me, the subscriber, personally came CHARLES J. WIRTNER, DOMINICK SCHMATZ and NELLIE T. FIELDS, to me personally known to be the same persons described in and who executed the above undertaking, and severally acknowledged that they executed the same.

A. M. GONNELLY,  
Notary Public.

COUNTY OF CHAUTAUQUA, }  
CITY OF DUNKIRK. } ss.:

Dominick Schmatz, one of the sureties to the foregoing undertaking, being sworn, says that he is a resident of and a freeholder within the State of New York, and is worth on thousand dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

DOMINICK SCHMATZ.

Sworn to before me, this 20th day of  
December, 1901.

A. M. GONNELLY,  
Notary Public.

COUNTY OF CHAUTAUQUA, }  
CITY OF DUNKIRK. } ss.:

Nellie T. Fields, one of the sureties to the foregoing undertaking, being sworn, says that she is a resident of and a freeholder within the State of New York, and is worth on thousand dollars over all the debts and liabilities which she owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

NELLIE T. FIELDS.

Sworn to before me, this 20th day of  
December, 1901.

A. M. GONNELLY,  
Notary Public.

I find the sureties to the foregoing undertaking sufficient, and do hereby approve and allow the same.

DANIEL J. KENEFICK,

Justice Supreme Court.

Dated this 21st day of December, 1901.

**SUPREME COURT, CHAUTAUQUA COUNTY.**

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL as Mayor of the city of Dunkirk, JACOB P. GROESCH as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES A. HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON, and JAMES C. RUSSELL as members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

STATE OF NEW YORK,     }  
County of Chautauqua.   } ss.:

Charles J. Wirtner, being duly sworn, deposes and says that he is plaintiff in the above entitled action; that the facts alleged in the complaint which is hereto annexed and made a part of this affidavit are true of deponent's own knowledge, the grounds of which knowledge are that the matters therein referred to are public records, and deponent was mayor of the said city of Dunkirk during the year 1900, and was for a long time a member of the common council of said city and is conversant with the matters therein set forth, and from being present at meetings of said

common council. That no previous application has been made for the order asked herein.

CHAS. J. WIRTNER.

Sworn to before me, this 19th  
day of December, 1901.

GEO. E. TOWNE,  
Notary Public.

STATE OF NEW YORK.  
SUPREME COURT, COUNTY OF CHAUTAUQUA.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL as Mayor of the city of  
Dunkirk, JACOB P. GROESCH as Clerk of  
the City of Dunkirk, PAUL WEISS, TIM-  
OTHY J. HOGAN, FRANK D. MATTESON,  
JAMES A. HOLSTEIN, ROBERT MCKAY, WIL-  
LIAM BURNS, GEORGE E. PAXTON, and  
JAMES C. RUSSELL as members of the  
Common Council of the City of Dunkirk,  
The City of Dunkirk, LESTER F. STEARNS  
and WARREN B. HOOKER,

Defendants.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the county of Chautauqua.

THOS. H. LARKINS,

Plaintiff's Attorney,

Office and P. O. Address,

228 Central avenue,

Dunkirk, N. Y.

Dated this 19th day of December, 1901.

MR. STEVENS: Next is the complaint. The title of the action and the venue.

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

vs.

DANIEL SCANNELL as Mayor of the city of Dunkirk, JACOB P. GROESCH as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES A. HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON, and JAMES C. RUSSELL as members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

The complaint of the above-named plaintiff respectfully shows:

I. For a first cause of action: That the city of Dunkirk is and at the time herein mentioned was a domestic municipal corporation, duly created under and by virtue of the laws of the State of New York, and located within the county of Chautauqua.

That plaintiff is and has been for many years a citizen and a resident and taxpayer in said city of Dunkirk, and has been and is assessed for and liable to pay taxes therein to the amount of \$1,000.

That at the times herein mentioned the above-named defendant, Daniel Scannell, was and is duly qualified and acting mayor of said city; the above-named defendant, Jacob P. Groesch, was and is the duly qualified and acting clerk of said city, and the above-named defendants, Paul Weiss, Timothy J. Hogan, Frank D. Matteson, James A. Holstein, Robert McKay, William Burns, James C. Russell and George E. Paxton, were and are the duly

qualified and acting councilmen of said city, being and constituting the common council of said city.

That the defendants, Lester F. Stearns and Warren B. Hooker, above named, are and at the times herein mentioned were the owners in fee of certain real property situated in the city of Dunkirk, Chautauqua county, State of New York, and known as No. 338 Central avenue, in said city.

That the defendant, the city of Dunkirk, owns in fee-simple absolute a parcel of real estate situated in said city of Dunkirk, county of Chautauqua, and State of New York, known as the City Hall property, and being south of and adjoining the above-mentioned premises, No. 338 Central avenue, and particularly a strip thereof specially described hereinafter, running from Central avenue to Lynx street, in said city of Dunkirk, being adjoining said property of the defendants, Lester F. Stearns and Warren B. Hooker, hereinbefore mentioned as herein described and set forth.

That some time prior to December 3, 1901, a petition, of which the following is a copy, was presented to the mayor and common council above named of said city of Dunkirk, to wit:

*“To the Honorable, the Mayor and Common Council of the City of Dunkirk:*

“Gentlemen.—We, the undersigned, citizens and taxpayers of the city of Dunkirk, having learned with surprise of the resolution recently offered in the common council looking to the erection of a fire hall or building adjacent to the new Postoffice building, upon the City Hall park, do most earnestly protest against any steps being taken whatever in that direction, and against the sale of the present fire hall on Central avenue, and on the contrary we respectfully petition the common council to take such action as shall prevent the erection of any building upon the north side of said park adjacent to the new Postoffice building, as any structure there would greatly injure the City Hall park, would make it much smaller, it being none too large now, would injure the view of the City Hall and shut off the light on the north side of the same, and would destroy the sightliness of the new Postoffice building, which is a credit to the city and a benefit and ornament to the City Hall park and the city's property.



"(Signed.) M. J. O'Donnell, William Bookstaver, Frank May, A. J. Lunt, George A. Starr, E. Madigan, W. E. Phelps, C. F. White, Alex. Williams, Sr., A. W. Cummings, Jacob Rider, Geo. E. Blackhan, I. M. Levy, Clark Boss, Charles Blood, J. T. Williams, E. J. West, W. J. Graff, Mrs. A. Graff, Charles Ehlers & Co., Mrs. O. N. Kimball, Edward C. Perry, B. R. Gifford, F. C. Nagle, Charles F. Nagle, J. Q. Baker, John Scully, El Fink, R. J. Gross, John T. Madigan, R. Mulholland, C. E. Hequembourg, Wm. Zimmerman, C. H. Richards, Albert E. Nugent, J. C. Haggett, F. B. Barnard, T. J. Cummings, A. G. Sippel, M. P. Quirk, George Richmond, N. E. Beardsley, A. C. Romer, Fitzer & Link, O. B. Mulholland."

Received and filed.

Councilman Holstein moved that the communication as read be spread upon the minutes of this meeting. Carried.

That thereafter and on the 3d day of December, 1901, said defendant, the common council of said city of Dunkirk, adopted a resolution, of which the following is a copy, to wit:

Councilman Russell offered the following resolution and moved its adoption:

Whereas, A petition has been presented to this common council protesting against any further erections upon the present City Hall property or park; and

Whereas, In the judgment of this common council the said City Hall park is at present a great ornament to the city of Dunkirk, is not needed for building purposes, is none too large now, and any further building thereon at any point west of the present front of the City Hall would greatly injure the present value and beauty of said park, and in the absence of a real need by the city for additional building for city purposes, should not be made; and

Whereas, There has recently been erected north of the present north line of said City Hall property a building which is an ornament and benefit to the city, and which increases the value and greatly improves the appearance of the said City Hall Park property, the light and air to which said building would be injured and damaged by any building on the north side of said City Hall

property west of the present west line of said City Hall and the ornamental value of said city property occasioned by such building spoiled; and,

Whereas, The owners of said building desire a lease to them and their heirs and assigns of an easement of light and air only, in, on, over and across the north fifteen (15) feet of said City Hall property west of the present front of the west line of the City Hall building and ten (10) feet along said north side of said City Hall property from the said west line of said City Hall building to the east line of said property; said owners of such building or their heirs, executors or assigns, never, however, to have any other or further rights or interest therein more than they or any of them now have together with the said lease of said easement and light and air as above, and never to have any right of possession, entry or use of the property covered by said easement for any purpose other than said light and air; now, therefore, be it

Resolved, That the Mayor and City Clerk be and they are hereby authorized and directed, for and in consideration of the sum of one (\$1.00) dollar to be paid to the said City of Dunkirk by Lester F. Stearns and Warren B. Hooker, and for and in consideration of the increase in value to the City Hall Park and property and the increase in value of other property in the city in the neighborhood thereof, and of the benefits to all of said property and to the inhabitants and people of the City of Dunkirk which have been received and acquired in consequence of the erection of the new building upon the northerly side of the said City Hall Park, known as the Stearns building by Messrs. Stearns & Hooker, and for other good and valuable considerations forthwith to execute and deliver a lease unto said Lester F. Stearns and Warren B. Hooker, and to their heirs, executors, administrators or assigns of the free and uninterrupted right, use and easement for light and air of, in, on, over and along all that part of the City Hall property lying and being along the north side thereof and being fifteen (15) feet in width, running from Central Avenue easterly to the present west line of the

City Hall Building and ten (10) feet in width running from said west line of said City Hall property east to Lynx Street, conditioned, however, that this lease shall absolutely terminate when the City of Dunkirk shall make a bona fide and valid legal sale and conveyance of the whole of said City Hall Park, and further conditioned that this lease shall also terminate whenever after the City Hall shall have used substantially all that part of said City Hall Park not covered by this lease, it becomes necessary to use the said strip of land fifteen feet wide from Center Street to the west line of said hall and ten feet wide from that point to Lynx Street along the northerly side of said park upon which to construct and erect additions to the City Hall to meet the actual requirements for city purposes and not fire hall purposes.

Said lease or agreement, however, to provide and be conditioned that the said lessees nor their heirs, executors, administrators or assigns, shall under and by virtue thereof, receive, have or acquire no greater or other rights than said right to the non-interference with said light and air and shall not receive or acquire by virtue of said contract any right whatever to the physical use or possession of the above-described property or to go upon the same for any purpose, provided, however, that same shall not in any manner lessen or affect the rights of said Sterns & Hooker in and along said north line of said property to eaves and area boxes, heretofore acquired.

Ayes—Hogan, Weiss, Holstein, Matteson, McKay, Burns, Russell.

Nays—Paxton.

After its adoption, Mayor Scannell gave notice of his intention to veto the resolution within the prescribed time.

That thereafter the Mayor above named vetoed said resolution and returned said resolution to said Common Council, without his approval, of which veto and the message accompanying the same the following are copies, to wit:

Mayor's Office,  
City of Dunkirk, New York,  
December 13th, 1901.

To the Honorable the Common Council of the City of Dunkirk,  
N. Y.

Gentlemen:—I return herewith, without my approval, resolution having reference to lease of a portion of City Hall Park property, passed at a regular meeting of your honorable body held December 3, 1901.

This resolution directs the mayor and city clerk to execute and deliver to Messrs. Stearns and Hooker a lease of the free and uninterrupted right, use and easement for light and air of, in or over and along all that part of the City Hall property lying and being along the north side thereof and being 15 feet in width running from Central avenue easterly to the present west line of City Hall building and 10 feet in width running from said west line of said City Hall property east to Lynx street, conditioned, however, that this lease shall absolutely terminate when the city of Dunkirk shall make a bona fide and valid legal sale and conveyance of said City Hall park, and further conditioned that this lease shall also terminate whenever after the city shall have used substantially all that part of said City Hall park not covered by this lease, it becomes necessary to use the said strip of land 15 feet wide from Center street to the west line of said hall and 10 feet wide from that point to Lynx street along the northerly side of said park upon which to construct and erect additions to the City Hall to meet the actual requirements for City Hall purposes and not for fire hall purposes.

Treating this matter as my personal business, it would hardly be businesslike, however remote the necessity for using the property seemed at the time, to tie the property up in such a way that I could not use it if I would. As I would treat this proposition were it my personal matter, so must I treat it, if I do my duty, as a public officer of the city of Dunkirk, the interest of said city being, in part at least, committed to my care as mayor.

My first objection to the terms of this lease is that if in the future the city found it necessary or advantageous to dispose of a portion of City Hall park, which included any portion of the same sought to be covered by this lease, it would be debarred from so doing by the terms of said lease, which stipulate that in order to have same terminate, "a bona fide and valid legal sale of the whole of said City Hall park" must be made.

My second objection is that if the necessity for additional room for City Hall purposes arose and it was thought wise by the future governors of the affairs of the City Hall on and over a portion, say the real portion, of the City Hall park, sought to be covered by this lease, they would be prevented from so doing by the terms of said lease which require that the same shall "terminate whenever after the city shall have used substantially all that part of said City Hall park not covered by this lease, it becomes necessary to use the said said strip of land 15 feet wide from Center street to west line of said hall and 10 feet wide from that point to Lynx street.

While there seems to be now no need of this particular strip of land for City Hall purposes, and while I am satisfied that there is absolutely no desire on the part of the public to use the same unnecessarily to the detriment or damage of the owners of the new Stearns building, none of us are able to discern what needs the future may bring. It would be unwise, therefore, in my judgment, to so sign away the city's rights in the matter that whatever might be the future necessities of the city, or however urgent, the city would be barred from using its own property in its own way. This would be the case were a lease given as your resolution directs.

I, therefore, by right of the power vested in me as mayor, do hereby veto the resolution hereto attached and passed by your honorable body as above stated on December 3, 1901.

Respectfully,

(Signed)

D. SCANNELL, Mayor.

That by the charter of said city of Dunkirk said veto and such returning of said resolution by said mayor without his approval rendered said resolution ineffective and nugatory unless such reso-

lution was thereafter sustained by the votes of at least two-thirds of all the members elected to the Common Council of said city.

That thereafter and on the 17th day of December, 1901, said Common Council of the city of Dunkirk by the following vote sustained said resolution and did not sustain said veto, to wit:

Councilman Russell moved that the mayor's veto be not sustained.

Ayes—Hogan, Weiss, Holstein, Matteson, Burns, Russell.

Nays—McKay, Paxton.

Ayes, 6; nays, 2.

More than two-thirds of all the members elected to said common council having voted for said motion.

That the statutes incorporating said city of Dunkirk and the various acts and statutes supplementary thereto and amendatory thereof do not empower nor authorize the above-named defendants, the common council, the mayor and the clerk of said city of Dunkirk, or any or all of said defendants to make the contract contemplated nor to lease, sell, nor dispose of real estate belonging to said city of Dunkirk in the way and manner and for the purpose and object sought, nor for any purpose save public and municipal benefit and utility. That said contract is illegal and is not for the benefit of said city of Dunkirk, nor for public nor municipal use or benefit.

II. For a second cause of action: That said contract is without adequate or any consideration and if said contract is entered into by the defendants or any or all of them, the real property and estate of the defendant, the city of Dunkirk, will be thereby wasted and injured and the estate and property of said city of Dunkirk will be thereby fraudulently and wrongfully disposed of and that above-named defendants intend thereby collusively and wrongfully to alienate and divert the hereinbefore described property of the city of Dunkirk from its lawful public and municipal use and ownership into the use and ownership of said defendants Lester F. Stearns and Warren B. Hooker, their successors and assigns, and to and for private use and benefit and ownership.

•

That said lease is worth at least \$2,000.00. That if the objects and purposes of the hereinbefore set forth resolution are carried out, and if the contract therein and hereinbefore mentioned is entered into the said city of Dunkirk, its officers and servants, defendants herein, will thereby appropriate, dispose of, divert and alienate public and municipal property of said city of Dunkirk of the value of \$2,000 for private use and benefit and will thereby grant and convey for private use and benefit an easement in public and municipal property of said city of Dunkirk, without authority and unlawfully and without adequate or any consideration and to the loss and damage of the said city of Dunkirk and to the waste and injury of the property of said city of Dunkirk to the amount and value of two thousand dollars. That all of the defendants know the value of the said lease and the rental value of said property.

Wherefore, plaintiff demands judgment of this Court:

That the said lease of the property of the City of Dunkirk and the use and easement in said property granted or intended to be granted to the defendants Lester F. Stearns and Warren B. Hooker is without authority of law is unlawfully and improper waste and injury of the property of city of Dunkirk, and that the defendant be enjoined and restrained from executing and delivering to Lester F. Stearns and Warren B. Hooker, above-named defendants, their heirs, executors, administrators or assigns, a lease of the free and uninterrupted right, use and easement for light and air of, in, over and along all that said part of what is known as "The City Hall Property" situate in the city of Dunkirk, county of Chautauqua and State of New York, described as follows, to wit: Lying and being along the north side of said City Hall property and being fifteen (15) feet in width, running from Central avenue easterly to the present west line of the City Hall building and ten (10) feet in width running from said west line of said City Hall building east to Lynx street, on the conditions and for the considerations hereinbefore set forth and expressed, nor on any conditions nor for nor upon any considerations and form

disposing of, diverting from, conveying, alienating, or leasing of said described property of the city of Dunkirk to private uses and benefits or from any other use of said property than the lawful use and benefit thereof for municipal purposes by the city of Dunkirk, and for such other and further relief or judgment as may be meet and proper, with the costs of this action.

THOS. H. LARKIN,  
Plaintiff's Attorney.

STATE OF NEW YORK, }  
County of Chautauqua. } ss.:

Charles J. Wirtner, being duly sworn, deposes and says that he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters deponent believes it to be true.

CHAS. J. WIRTNER.

Subscribed and sworn to before me this 19th  
day of December, 1901.

GEO. E. TOWNE,  
Notary Public.

(Endorsed)

Read on application for injunction.

D. J. K.,  
J. S. C.



## SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

*vs.*

LESTER F. STEARNS and WARREN B. HOOKER,  
impleaded with DANIEL SCANNELL, as  
Mayor of the City of Dunkirk, JACOB P.  
GROESCH, as Clerk of the City of Dunkirk,  
PAUL WEISS, TIMOTHY J. HOGAN, FRANK  
D. MATTESON, JAMES A. HOLSTEIN,  
ROBERT MCKAY, WILLIAM BURNS, GEORGE  
E. PAXTON and JAMES C. RUSSELL, Mem-  
bers of the Common Council of the City  
of Dunkirk, The City of Dunkirk.

The above-named defendants Lester F. Stearns and Warren B. Hooker, answering the complaint in the above-entitled action.

First—For their first answer to said complaint, deny any knowledge or information sufficient to form a belief as to all that part of said complaint which reads as follows:

“That the statute incorporating said City of Dunkirk and the various acts and statutes supplementary thereto and amendatory thereof do not empower nor authorize the above-named defendants, the Common Council, the Mayor and the Clerk of said City of Dunkirk, or any or all of said defendants to make the contract contemplated, nor to lease, sell nor to dispose of real estate belonging to said City of Dunkirk in the way and manner and for the purpose and object sought, nor for any purpose, save public and municipal benefit and utility. That said contract is illegal and is not for the benefit of said City of Dunkirk, nor for public nor municipal use or benefit.

II. For a second cause of action: That if said contract is entered into by the defendants, or any or all of them, the real property and estate of the defendant the City of Dunkirk will be thereby waived and injured and the estate and property of

said City of Dunkirk will be thereby fraudulently and wrongfully disposed of and that above-named defendants intend thereby collusively and wrongfully to alienate and divert the hereinbefore described property of the City of Dunkirk, from its lawful public and municipal use and ownership into the use and ownership of said defendants Lester F. Stearns and Warren B. Hooker, their successors and assigns, and to and for private use and benefit and ownership.

That said lease is worth at least \$2,000.00.

That if the objects and purposes of the hereinbefore set forth resolutions are carried out and if the contract therein and hereinafter mentioned is entered into by the said City of Dunkirk, its officers and servants, defendants herein will thereby appropriate, dispose of, divert and alienate public and municipal property of said City of Dunkirk of the value of \$2,000.00 to private use and benefit and will thereby grant and convey for private use and benefit an easement in public and municipal property of said City of Dunkirk, without authority and unlawfully and without adoption or any consideration and to the loss and damage of said City of Dunkirk and to the waste and injury of the property of said City of Dunkirk to the amount and value of Two Thousand Dollars. That all the defendants know the value of the said lease and rental value of said property," and they therefore deny the same.

Second—For a second answer and defense to said complaint, these defendants allege upon information and belief:

That previous to the time or times mentioned and set forth in the complaint herein, at a meeting of the common council of the city of Dunkirk, a resolution was duly offered in substance to the effect that a committee be appointed to consider the advisability of disposing of the present fire hall premises on Central avenue and erecting the fire hall on the present City Hall park lot or property, extending from Central avenue to Lynx street, which resolution was supported by two members of the common council.

That the building and property erected upon these defendants north of and next adjacent to the City Hall park, has been erected at a large expense and has been so constructed as to beautify the City Hall park and property and constructed in such a manner as that the light in and of said building substantially all comes from windows on the south side of said building opening immediately upon the north line of the said City Hall property, and was so constructed in the belief and under the assurance and representation and statements of members of the common council of the city of Dunkirk, that the said City Hall property would remain, as it now is, an open park with light unobstructed by erections thereupon immediately adjacent to the property of the defendant until such time as it becomes a necessity in the interests of the city of Dunkirk for the said city to place thereon erections to meet necessary municipal purposes.

That the population of the city of Dunkirk is, in round numbers substantially 12,000. That the City Hall located on said park next to said building is and will be for many years to come entirely ample and sufficient to meet and answer all requirements of the city of Dunkirk for municipal purposes, and that any other building or erection upon said park, at the present time in entirely unnecessary and uncalled for and if any erection should be placed thereon, it would be to the detriment and damage of the taxpayers and an injury to said City Hall park property.

It is further alleged that any erection upon or along the north line of the said City Hall park property would not only be at this time, or for many years to come, utterly unnecessary and improvident, but would also work an irreparable injury to the aforesaid property of these defendants by reason of its interference with and stopping off substantially all the light in and to said building. That the said City Hall park property is of sufficient size to increase the present City Hall to several times its present capacity by additions thereto upon the west and north sides thereof, in such a manner as not in anywise to curtail, damage or interfere with the said light of the said defendant's building

and also to leave of the said City Hall property a substantial and greatly ornamental part thereof for purely park purposes, without any diminution of or interference with the said City Hall property to the said city of Dunkirk or its taxpayers for uses and purposes of the said city.

It is further alleged that by the construction of their aforesaid building and by reason of the character of the said erection and of the character of the use to which said building is and is to be put, the adjacent property of the city of Dunkirk has been materially and substantially benefited and its value largely increased. The entire ground floor of said building is now being used for the new postoffice of said city of Dunkirk, and was so constructed with the view to being used as the postoffice. That the said building as so constructed and lighted is ample and sufficient for all the present requirements of the city of Dunkirk for postoffice purposes, but if any encroachments or buildings are permitted to be made and erected on the City Hall park in such a manner as to interfere with the light and air of the said building, it will result in such inconvenience, annoyance and discomfort to the citizens of Dunkirk and patrons of said postoffice.

Wherefore, these defendants demand that the complaint herein be dismissed as to them and that they may have such other or further relief or such other or further relief, or both in the premises, as shall be just and the proof shall then entitle.

ELTON B. WARNER,

Attorney for Defts. Stearns & Hooker,

No. 338 Central Avenue,

Dunkirk, N. Y.

STATE OF NEW YORK, }  
County of Chautauqua. } ss.:

Lester F. Stearns, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of deponent's own knowledge, except as to those matters therein stated to be alleged to be on information and

belief and that as to those matters he believes it to be true. That he is familiar with the facts in the above-entitled action. That these defendants are united in interest and plead together.

LESTER F. STEARNS.

Sworn to before me this 30th day of  
December, 1901.

MABEL M. SAXTON,  
Notary Public.

MR. STEVENS:

The next paper is the finding of Justice White upon the trial.

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, as Mayor of the City of  
Dunkirk, et al.

The issues in the above entitled action, by the service of the answer of the defendants Lester F. Stearns and Warren B. Hooker having been duly brought to trial before a Special Term of the Supreme Court held at the City and County Hall in the City of Buffalo on the 21st day of January, 1902, all of the defendants in said action having been duly served and none of the said defendants having appeared or answered except the defendants Lester F. Stearns and Warren B. Hooker, and the court having heard the proofs and allegations of the respective parties, hereby makes, decides and files the following findings of fact and conclusions of law.

## FINDINGS OF FACT.

First.—That the above named defendants Lester F. Stearns and Warren B. Hooker are and for upwards of one year last past have been the owners and in the actual possession and occupation, in fee simple absolute, of that certain piece or parcel of land situate in the city of Dunkirk, County of Chatauqua and State of New York, designated on a certain map entitled "Map of part of the town (now city) of Dunkirk, Chatauqua County, State of New York, 1838," as lots numbers 53 Center Street and 54 Lynx Street, in Block No. 564 of said city, said premises together being thirty feet in width on Central Avenue and Lynx Street and 153 feet deep.

Second.—That the municipal corporation of the City of Dunkirk is and since about the year 1874 has been the owner and in the actual possession an occupation of all that tract or parcel of land situate in the City of Dunkirk, designated on the said map above described as lots 56, 58, 60 and 62 Lynx Street and lots 55, 57, 59 and 61 Center Street in said Block 564, being "The State Armory Lot," all of above described premises of said defendants and said City being the same premises mentioned and described in the complaint in this action.

Third.—That the premises above described of the defendants Lester F. Stearns and Warren B. Hooker adjoin the said premises of the City of Dunkirk upon the south side of the premises of said defendants and the north side of the premises of said City.

Fourth.—That on or about the 25th day of March, 1901, the proper city officials of the City of Dunkirk, pursuant to the resolution and direction of the Common Council of said city, made, executed and delivered to the defendants Lester F. Stearns and Warren B. Hooker a conveyance or lease by which the said City of Dunkirk for a good consideration, conveyed to the said defendants the right to construct area boxes two feet upon the City's property upon the north side thereof and also the right to extend the cornice upon the new building, then proposed to

be erected by the said defendants Stearns & Hooker, out over the City's property a distance of not to exceed two feet and that at about and subsequent to the time of the execution of said conveyance by the City to said defendants, the said defendants Stearns & Hooker informed the members of the Common Council of the City of Dunkirk, the Municipal body having the control of the real estate and public grounds of said City of their intention to erect upon their property hereinbefore described a three story building to be used for postoffice and other office purposes, which would be constructed in a handsome, ornamental style that would greatly benefit, improve and increase the value of the City Hall property and of other property in the neighborhood and that if they did construct such building they desired to be protected to the extent that the City of Dunkirk would not suffer or permit any obstruction or erection of any kind upon its property hereinbefore described that would shut off the light and air from the south side of the said proposed new building of the defendants until such time as it became absolutely necessary for the City to use its said lands and premises upon which to erect additions to the City Hall for City Hall purposes, and thereupon the members of the Common Council advised the said defendants Stearns and Hooker to proceed and erect their building and stated and represented to said defendants that if they did erect said building that they would be protected in the future from any erections upon the City Hall park or property next to the said building so as to cut off the light and air from the south windows in the same until such time as it became absolutely necessary for the city to place erections thereon for City Hall purposes, and that relying upon and in compliance with and believing the said statements, advice and representations of the said members of the Common Council of said City, the said defendants did proceed to and did erect and finish a handsome three-story brick building, the front and south side of which next to the said City Hall park property is constructed in a handsome and ornamental way and very greatly

adds to the value and appearance of the said City's Hall park and property.

Fifth.—That the said City Hall park and property, so-called, are the same premises hereinbefore described in finding number two as belonging to the said City of Dunkirk.

Sixth.—That after the erection and substantial completion of the said new building upon the property of the said defendants, at a regular meeting of the Common Council of the City of Dunkirk, a resolution was offered by one of the members thereof, in substance, directing the Mayor of the City of Dunkirk to appoint a committee to take up the advisability of selling the fire hall property of the City of Dunkirk located in the same block as the said property of the said city and a short distance northerly thereof, and to erect upon the said City Hall park property on the northerly side thereof and next to the building of the said defendants a fire hall running through from Central Avenue to Lynx Street, giving to such committee power to act in the premises, the effect of which resolution, if carried out, would be to place an erection upon the north side of the said city property, which would absolutely cut off the light and air from the said new building of the defendants, and very greatly diminish and destroy the value thereof, which resolution, however, failed of adoption by the Common Council.

Seventh.—That upon the said City Hall property is located the City Hall, a building constructed thereon by the State of New York many years ago for an armory, which is a handsome, sightly building from an architectural standpoint, which building sets back upon the easterly side of the said City Hall park, the front of the same being substantially one hundred feet from Central Avenue, the north side of the same being substantially thirty-three (33) feet south of the south side of the said new building of the defendants, which said building is and for many years to come, will be ample to meet all the requirements, needs and necessities of the City of Dunkirk for City Hall purposes. the said City of Dunkirk being a city of 12,000 population, and



all or substantially all of the municipal offices of said City being located in said building, with ample space and facilities as aforesaid for the transaction of the business of the said City.

Eighth.—That the defendant, the City of Dunkirk, is a municipal corporation, duly created and existing under and by virtue of the laws of the State of New York as such. That the defendant, Daniel Scannell, is the Mayor of the City of Dunkirk. That Jacob P. Groesch is clerk of the City of Dunkirk. That Paul Weiss, Timothy J. Hogan, Frank D. Matteson, Robert McKay, James A. Holstein, George E. Paxton, William Burns and James C. Russell are members of the Common Council of the City of Dunkirk. That the Mayor is the chief executive officer and that the Common Council of the City of Dunkirk have the care, management and control of the City and its finances and property and have power to lease the real property of said City.

Ninth.—That the plaintiff is and for many years has been a citizen and resident of the City of Dunkirk, and is a taxpayer in said City and assessed for and liable to pay taxes on property assessed therein to the amount of over one thousand dollars, and is fully competent to bring this action.

Tenth.—That all of the acts, steps, proceedings and statements mentioned, described and fully set forth in folios 5 to 25 of the complaint in this action, inclusive, are hereby found to be true as therein set forth, and that the resolution of the Common Council by that body duly adopted, and subsequently vetoed by the Mayor of the City of Dunkirk, and subsequently re-adopted and passed over the veto of the Mayor, authorizing and directing him to execute the lease therein mentioned and set forth, was pursuant to the previous understanding between the defendants Stearns & Hooker and the members of the Common Council, found and set forth in paragraph herein numbered fourth, and as a consummation of said previous unwritten agreement and for the purpose of carrying the same out fully in order to justly protect the interests and property of the

defendants and at the same time in no wise injure or lessen the ~~the rights of the defendant~~, the City of Dunkirk.

Eleventh.—That by reason of the situation and condition of the present City Hall park property, it is a great ornament and benefit to the City of Dunkirk in its present condition and to all property in the neighborhood thereof and that any erection whatever upon the said property would materially injure the same and cause an unnecessary expenditure and waste of the City's funds and burden upon the taxpayers of said City, with no corresponding benefit whatever, but on the contrary, an injury to the City property, until such time as the needs and demands of the City shall actually require additions to the present City Hall.

Twelfth.—That the said new building of the defendants, known as "The Stearns Building," is in dimensions thirty feet in width on Central Avenue and 120 feet deep and three stories in height, and the entire ground floor of said building is now being used for the postoffice of said City of Dunkirk and was constructed with the view of using the same as the postoffice for for many years to come, the same being centrally located and in the most prominent and accessible part of the City. That the same, as so constructed and lighted, is ample and sufficient for all the requirements of the City of Dunkirk for postoffice purposes, but if any encroachments or buildings are permitted to be erected on City Hall park as to interfere with the light and air of said building, it will result in much inconvenience and annoyance and discomfort to the citizens of Dunkirk and the patrons of said office.

Thirteenth.—That the making of the lease from the Mayor of the City of Dunkirk to the defendants Stearns & Hooker, contemplated by the resolution passed by the Common Council of the City of Dunkirk over the veto of the Mayor of the City of Dunkirk, will be a substantial benefit to the City of Dunkirk and the City Hall park property.

Fourteenth.—That between the passage of the resolution directing the execution of a lease by the Mayor to the defendants Stearns & Hooker over the veto of the Mayor, and the service upon the Mayor of said City of the injunction herein, a period of several days elapsed, said period of time being ample and sufficient to permit the Mayor to make, execute and deliver the lease in question, but that the Mayor during said time and since said time has wholly failed and neglected to make and execute said lease.

I find as

#### CONCLUSIONS OF LAW:

First.—That the injunction heretofore granted in this action be and the same is hereby vacated and set aside.

Second.—That the present City Hall property, located at the corner of Central Avenue and Fourth Street, in the City of Dunkirk, New York, shall not be further encroached upon by extensions or additions, or by the building of further structures thereon, but shall be kept intact in its present condition until such time as it should become necessary for the City of Dunkirk to use the same for the legitimate and necessary purposes of the City for City Hall property, and that when such time shall arrive in so further utilizing the unoccupied land now constituting the park around and about the present City Hall, the same shall be so built upon and used in such a manner as not to unnecessarily work a manifest or substantial injury to the adjacent building upon the north side thereof, now owned by the defendants, Lester F. Stearns and Warren B. Hooker, known as the Stearns Building, in the way of deprivation of light and air, or otherwise, but that in so utilizing any portion of said park or premises about the said City Hall in the manner aforesaid, so far as practicable and possible, such parts or portions of the same shall be so utilized from time to time as will the least interfere with the enjoyment of said premises of the defendants Stearns and Hooker on the north side thereof, or to

work an injury thereto, or in the diminution in the value thereof, and that in no event will the southwest corner thereof, being that portion now bounded upon the east by the City Hall and upon the north by the stone walk running at right angles to Central Avenue, from the Central Avenue entrance to the street be utilized until finally necessary, nor shall any structure or extension be placed along the north side of said City Hall park property at any time within fifteen feet of the north line thereof, until the absolute necessities of the City shall demand and require such use for City Hall purposes; except that that portion of City Hall park on the northerly side thereof, and running west from Lynx Street fifty feet and north of the City Hall 25 feet shall be the first property used for additions to the present City Hall building, and within the said dimensions of twenty-five feet in width bounding on Lynx Street, by fifty feet in length.

Third.—That the resolution heretofore passed by the Common Council of the City of Dunkirk on the third day of December, 1901, and fully set forth in the complaint herein, directing the execution of a lease in the premises by the Mayor to the said defendants Stearns and Hooker, is a proper and valid act and exercise of the official powers of said Common Council.

Fourth.—That no costs are allowed to any of the parties in this action.

Let judgment be entered accordingly.

TRUMAN C. WHITE,

Justice Supreme Court.

(Endorsed)

Erie Special Term. Jan. 21, 1902. Read on motion and ordered filed in Chautauqua County Clerk's office.

PERRY E. WURST,

Sp. Dep. Clerk.

At a Special Term of the Supreme Court held in Buffalo,  
N. Y., January 21, 1902.

Present—Hon. Truman C. White, Justice Presiding.

## SUPREME COURT, CHAUTAUQUA COUNTY.

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CHARLES J. WIRTNER,

vs.

DANIEL SCANNELL, as Mayor of the City of  
Dunkirk, et al.

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The issues raised in the above entitled action, by the service of the answer of the defendants Lester F. Stearns and Warren B. Hooker having been duly brought to trial before a Special Term of the Supreme Court held at the City and County Hall of the City of Buffalo, on the twenty-first day of January, 1902, all of the defendants in said action having been duly served and none of the said defendants having appeared or answered except the defendants Lester F. Stearns and Warren B. Hooker, and the Court having heard the proofs and allegations of the respective parties, and having been attended by Thomas H. Larkins, attorney for the plaintiff, and Elton D. Warner, attorney for the defendants Stearns and Hooker, and the Court having made and filed its findings of fact and conclusions of law thereupon.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,

First.—That the injunction heretofore granted in this action be and the same is hereby vacated and set aside.

Second.—It is further Ordered, Adjudged and Decreed, that the present City Hall property, located at the corner of Central Avenue and Fourth Street in the City of Dunkirk, New York, shall not be further encroached upon by extensions or additions, or by the building of further structures thereon, but shall be kept intact in its present condition until such time as it shall become necessary for the City of Dunkirk to use the same for

the legitimate and necessary purposes of the City for City Hall property, and that when such time shall arrive in so further utilizing the unoccupied land now constituting the park around and about the present City Hall, the same shall be so built upon and used in such a manner as not to unnecessarily work a manifest or substantial injury to the adjacent building upon the north side thereof, now owned by the defendants, Lester F. Stearns and Warren B. Hooker, known as the Stearns Building, in the way of deprivation of light and air, or otherwise, but that in so utilizing any portion of said park or premises about the said City Hall in the manner aforesaid, so far as practicable and possible, such parts or portions of the same shall be so utilized from time to time as will the least interfere with the enjoyment of said premises of the defendants, Stearns and Hooker, on the north side thereof, or to work an injury thereto, or in the diminution in the value thereof, and that in no event will the southwest corner thereof, being that portion now bounded upon the east by the City Hall and upon the north by the stone walk running at right angles to Central Avenue, from the Central Avenue entrance to the street, be utilized until finally necessary, nor shall any structure or extension be placed along the north side of said City Hall park property at any time within fifteen feet of the north line thereof, until the absolute necessities of the City Hall demand and require such use for City Hall purposes; except that that portion of the City Hall park on the northerly side thereof and running west from Lynx Street fifty feet and north of the City Hall twenty-five feet shall be the first property used for additions to the present City Hall building, and within the said dimensions of twenty-five feet in width bounding on Lynx Street, by fifty feet in length.

Third.—It is further ordered, adjudged and decreed, that the resolution heretofore passed by the Common Council of the City of Dunkirk on the third day of December, 1901, as fully set forth in the complaint herein, directing the execution of a lease

in the premises by the Mayor to the said defendants Stearns and Hooker, is a proper and valid act and exercise of the official powers of said Common Council.

Fourth.—It is further ordered, adjudged and decreed that no costs are allowed to any of the parties in this action.

J. D. GALLUP,  
Clerk.

Judgment roll filed and judgment entered Jan. 24, 1902, 9 A. M.  
(Endorsed)

Erie Special Term, Jan. 21, 1902.

Granted and ordered entered in Chautauqua County Clerk's office.

PERRY E. WURST,  
Sp. Dep. Clerk.

STATE OF NEW YORK,  
CHAUTAUQUA COUNTY, } ss.:  
CLERK'S OFFICE, }

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, as Mayor, &c., et al.

I have compared the foregoing with an original judgment roll remaining on file in this office in the above-entitled action, and do hereby certify that the same is a true copy thereof, of the whole of said original and of the time of filing the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at Mayville, this 29th day of April, 1904.

(Seal)

J. D. GALLUP,  
Clerk.

"Chautauqua County, N. Y., Seal."

(Endorsed on back.)

## SUPREME COURT.

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CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, as Mayor, &c., et al.

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Copy. Judgment roll.

MR. STEVENS: I now offer in evidence a certified copy of an order vacating the judgment, Exhibit 101, granted at a special term of the Supreme Court, held in the city of Buffalo, on the 25th day of November, 1904; and I also offer in evidence a certified copy of the stipulation attached to such order dated November 2, 1904, signed by Warren B. Hooker, Lester F. Stearns, Thomas H. Larkins, and Charles J. Wirtner, filed in the Chautauqua County Clerk's office, November 26, 1904, and I will read the same in evidence.

At a Special Term of the Supreme Court, held at the City and County Hall, in the City of Buffalo, in and for the Eighth Judicial District of the State of New York, on the 25th day of November, 1904.

Present—Hon. Truman C. White, Justice Presiding.

## SUPREME COURT, CHAUTAUQUA COUNTY.

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CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, as Mayor of the City of  
Dunkirk, et al., &c.

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On reading and filing the stipulation in the above-entitled action, dated November 2, 1904, and signed by Warren B.



Hooker, Lester F. Stearns, Thomas H. Larkins and Charles J. Wirtner, it is

Ordered, that the judgment entered herein on January 24, 1902, in the office of the Clerk of the County of Chautauqua be and the same is hereby vacated, set aside and annulled, and it is further

Ordered, that the findings of fact and conclusions of law made by Mr. Justice White upon which said judgment is founded be and the same are hereby cancelled and altogether hold for naught.

Enter W.

Erie Special Term. Nov. 25 1904.

Granted and ordered in Chautauqua County Clerk's office

PERRY E. WURST,

Special Deputy Clerk.

MR. STEVENS: "W" being understood to be the signature of Justice White. The following is the stipulation.

NEW YORK SUPREME COURT.

CHARLES J. WIRTNER,

vs.

DANIEL SCANNELL, as Mayor of the City of Dunkirk, JACOB P. GROESCH, as Clerk of the City of Dunkirk, PAUL WEISS, TIMOTHY J. HOGAN, FRANK D. MATTESON, JAMES A. HOLSTEIN, ROBERT MCKAY, WILLIAM BURNS, GEORGE E. PAXTON and JAMES C. RUSSELL, Members of the Common Council of the City of Dunkirk, The City of Dunkirk, LESTER F. STEARNS and WARREN B. HOOKER,

Defendants.

It is hereby stipulated by the undersigned, Charles J. Wirtner, the plaintiff above named, who is also the present Mayor of the defendant, The City of Dunkirk; Daniel Scannell, above

named as Mayor of said City; Thomas H. Larkins, attorney for the plaintiff in the above-entitled action; Thomas J. Heffernan, present attorney for the defendant The City of Dunkirk; and the defendants Lester F. Stearns and Warren B. Hooker above named, that the judgment in the above-entitled action entered in the office of the Clerk of Chautauqua County on the 24th day of January, 1902, be vacated, set aside and annulled and that the findings of fact and conclusions of law made by Mr. Justice White on which said judgment is founded be cancelled and altogether held for naught and that an order to that effect and for that purpose may be applied for, made and entered upon this stipulation without further notice to any of the parties or attorneys in the action and said action is discontinued on the merits, without costs.

Dated November 2, 1904.

WARREN B. HOOKER,  
LESTER F. STEARNS,  
THOS. H. LARKINS,  
CHARLES J. WIRTNER.

Chautauqua County Clerk's office.

Filed Nov. 26, 1904.

STATE OF NEW YORK, }  
CHAUTAUQUA COUNTY, } ss.:  
CLERK'S OFFICE, }

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

vs.

DANIEL SCANNELL, as Mayor, &c., et al.

I have compared the foregoing with an original stipulation and order remaining on file in this office in the above-entitled action, and do hereby certify that the above is a true copy

thereof, of the whole of said original and of the time of filing the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at Mayville, this 10th day of January, 1905.

(Seal)

J. D. GALLUP,

Clerk.

MR. STEVENS: I now read the evidence of Richard W. Walsh, page 358.

(Mr. Stevens read the questions and Mr. Lawyer the answers as follows:)

RICHARD W. WALSH, called by counsel for Committee, being sworn, testified:

DIRECT EXAMINATION by MR. COMAN:

Q. Mr. Wash, you are stenographer? A. Yes, sir.

Q. And one of the official stenographers of the Supreme Court in the Eighth District? A. Yes, sir.

Q. And were you such on the 21st day of January, 1902? A. Yes, sir.

Q. On that day did you report the proceedings taken before Justice White in an action entitled "Charles J. Wirtner against Daniel Scannell, as Mayor of the City of Dunkirk and others"? A. Yes, sir.

Q. I ask you to look at the paper, Mr. Wash, which I show you and say whether or not that is a correct transcript of the minutes of the proceedings taken in that action on the 21st day of January, 1902? A. Yes, sir.

MR. STEVENS: I now offer this paper in evidence and read the same, page 359.

SUPREME COURT, CHAUTAUQUA COUNTY.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, as Mayor of the City of  
Dunkirk, and others.

Proofs taken before Hon. Trueman C. White, at the Court House, in the City of Buffalo on the 21st day of January, 1902, 2 P. M.

APPEARANCES:

Thomas H. Larken, for Plaintiff.

Elton D. Warner, Esq., for Defendants Stearns and Hooker.

It is stipulated that the deeds of the so-called City Hall property and of the property of the said defendants Stearns & Hooker, next adjacent thereto on the north are received in evidence.

Marked Exhibits "A" and "B."

The deed to the City being letters patent from the State of New York.

It is also stipuated that the resolution by the Common Council of the City of Dunkirk, at its regular meeting on the 3rd day of December, 1901, be received in evidence by a copy thereof.

Marked Exhibit "C."

Also that the petition to the Common Council, signed by numerous taxpayers of the City of Dunkirk—which is attached to the complaint, is offered and received in evidence.

Marked Exhibit "D."

Also the veto message of the Mayor of Dunkirk, disapproving of the foregoing resolution is received in evidence.

Marked Exhibit "E."

As is also the resolution of the said ~~Common Council~~, overruling the Mayor's veto, thereafter and on the 17th day of December, 1901, by the said Common Council duly passed and adopted.

Received in evidence and marked Exhibit "F."

Also that the resolution presented at a regular meeting of the Common Council of the City of Dunkirk, held on the — day of November, 1901, in substance proposing that the Mayor appoint a committee of councilmen, with power to act, to sell and convey the present fire hall property of said City on Central Avenue and erect a fire hall on the above mentioned City Hall park property, immediately adjacent to and south of the above property of the said defendants, Stearns and Hooker.

Offered and received in evidence.

Marked Exhibit "G."

It appears further, all of the defendants in said action have been duly served in this action; that more than twenty days have elapsed since the service on all of said defendants and no one has appeared or answered but the defendants, Stearns and Hooker, who are present; and that by the consent of the plaintiff and defendants who have appeared, this action is now brought before this court.

LESTER STEARNS, sworn in behalf of the defendants;

DIRECT EXAMINATION by MR. FARNHAM:

Q. You are one of the defendants, Mr. Stearns? A. Yes.

Q. And one of the owners of the property immediately north of the city hall park property in Dunkirk? A. I own one-half the interest in that property, the other half interest is owned by Judge Hooker.

Q. How big a town is Dunkirk? A. About twelve or thirteen thousand.

Q. What does the City property consist of? A. That is known as City Hall Park property, on which is situated the

City Hall, in which are located all of the municipal offices of the City of Dunkirk. Without any doubt the hall is amply sufficient to meet all the needs and requirements of the City of Dunkirk for municipal purposes, to take care of all of the City's business for a good many years to come. We have standing on the north side of the property a new building which was constructed during the summer of 1901, by Judge Hooker and myself, at a large expense, which was completed in the fall. Previous to the construction of this building I had talks with the members of the Common Council, all of them I think with the exception of two, before we let any contract relative to putting this building on this property, and it was represented to me and also to judge Hooker, on one or two occasions, if we constructed a handsome office building in which to remove the postoffice next to the City's property, that the City would not erect any building upon this property, or construction of any sort, to interfere with the light and air for many years to come. These talks occurred on two or three different occasions, between, as I say, all of the members of the Council with the exception of two and myself and Judge Hooker. The result of that was that we started to make out contracts and construct this building and had it largely completed about November. We acted entirely on the assurance of the members of the common council that if we did this there would be no interference with our light and air until the time came which necessitated the putting up of a larger City Hall to take care of the needs of the city and its business. Those representations, to a very great extent at any rate, influenced us in constructing this building. We put it up, as I stated, and in November this resolution was introduced by Councilman ———, which has been offered in evidence, looking to the appointment of the committee to sell the fire hall and put up a new fire hall instead of this building, cutting off the light and air. Immediately following this proceeding and relying on the previous representations of the common council, which we have already de-

tailed, and in confirmation of the previous representations of the common council to me, and I think also to Judge Hooker, we took these steps which are here matters of record.

Q. How is your south wall constructed? A. The south wall was constructed with a large number of windows in the three stories, it being a three-story building, giving light to the entire south side of the building from this part.

Q. Is it constructed differently from a blank wall? A. Yes, it is a wall with a great many openings, the windows are ornamental, the whole side of the building is ornamental, a building which greatly benefits the City Hall park and adds to the beauty of that property.

Q. If you thought at any time the promises that were made to you by members of the common council and other city officials would not be carried out, would you have constructed your building in that way? A. We would not have constructed the building at all, in that way or any other way.

By MR. LARKIN:

Q. Are you able to give a rough estimate as to the additional expense it has been to you to construct the building as it has been constructed from what it would have been if you had erected a blank wall on the south side? A. I haven't given the matter any thought; what you term a rough estimate, I should say, at any rate from four to seven thousand dollars additional expense.

Q. The material you have used there is different from what you would put in a blank wall? A. Yes; and the workmanship, the extra cost of the labor and architecture in doing it.

Q. The City Hall park, is it benefited or depreciated in appearance and value by the present construction of that building, from what it would have been if you had put up a blank wall? A. It is without doubt very largely benefited and increased in value. I desire to say this: If any construction of any character were placed upon the park property for a good many years to come and until the time arrives when the city's needs and necessities require additions, it would not only injure the property

of the defendants, Stearns and Hooker, but it would also injure the property of the city and decrease its value materially.

Q. For what reason? A. For the reason the park property would be made much smaller, and it is a beautiful situation as it stands now, and if it were changed in that way, not only the park, but the City Hall itself, would be injured, defaced and destroyed, and the park would lose its value as a park.

Q. You are a property owner in Dunkirk? A. I am a taxpayer in Dunkirk; I am familiar with all of these institutions, and the owner of property and have been for years.

Q. In your opinion, would it be preferable for the city to use the park, in case it became necessary to construct a building for city purposes—would it be preferable to use the park or buy other property? A. I want to explain that this way: If it became necessary to add to the City Hall for purely City Hall purposes, in my judgment, it can be done on the north side of the present City Hall, if it became necessary to add to the City Hall.

Q. In building for any other purpose would it be best for the interest of the city of Dunkirk to buy other property or construct on the City Hall property? A. It would be decidedly to the interest of the city to buy other property for all purposes, and the city would be far the gainer by it, in my judgment. I desire to say this in addition, that in the construction of our new building, although we did not do it for philanthropic purposes, at the same time it has not only added to the value and benefit of the city property, but it has very largely increased the value of other property in that location, and that is practically the central business point at the present time of the city; the street car lines come to this corner, and all of the property in that neighborhood has been increased in value by the construction of the new building, which is an ornament and a benefit to the property in that city.

Q. Has the value of the city property been increased by the construction of this building? A. Very largely.



MR. STEVENS: I now read the testimony of Truman C. White—

MR. ROGERS: Mr. President.

THE PRESIDENT: The gentleman from Broome.

MR. ROGERS: Before the reading of Mr. Justice White's testimony proceeds further, I want to express a sentiment which is very strong with me personally, and which has likewise been expressed to me by some dozen members, perhaps, of the Assembly. I am advised by the counsel for the Legislature that one of the serious allegations against Mr. Justice Hooker is to be based upon testimony of Mr. Justice White and the inferences which it is claimed can be drawn therefrom. That being so, I, for myself, and speaking for some members of this body, feel that it is right and just and fair to us that Mr. Justice White and the other witnesses in reference to this matter should be placed upon the stand, that we may hear and see for ourselves the answers and the demeanor of the witnesses, rather than to have the previous testimony read. I would like some expression as to the sentiment of this body. Of course, if I and those who have talked with me are in great minority, and it is the wish of those who are here to proceed with the reading and that only, we will submit; but I want to express at this time that desire and find out whether or not it is the desire of the majority if not nearly all the members of the joint session.

MR. RAINES: Mr. President, it is suggested that if the reading of testimony be suspended now there is nothing further to occupy our time until Justice White could be here, which is tomorrow. I do not see that there could be any particular objection to continuing the reading of the testimony of Justice White, and that the testimony having been read, then, Justice White being here, he can be called if it is desired by either side for further examination in regard to the matter of his testimony or the matter involved in this proceedings. It seems to me, therefore, Mr. President, while it may be entirely proper to have Justice White here in accordance with the expressed

views of a number of the members of the joint session, that it would be as well to continue the reading of the testimony.

MR. STANCHFIELD: Mr. President, we have nothing to say as to whether or no Justice White should be here to testify in person, but in behalf of Judge Hooker we should strenuously object at being compelled to go on with our defense until the other side has rested. In other words, we have the right to know what we are called upon to meet. I don't want to express any opinion as to whether or no he should be brought here. That is for the joint session to determine. As to when we should go on, we don't desire to go on before the other side has rested.

THE PRESIDENT: There is no motion before the joint session.

MR. GRADY: Mr. President, that ought, I think, to be clearly stated upon the record, that there is no motion, because I take it that under the procedure that we have adopted if any one member of this joint session shall ask that a witness shall be produced himself instead of his testimony being read, we would be obliged to do so.

MR. ROGERS: Mr. President, I won't go so far as to make it in the form of a demand, but I do think that it is a well pronounced sentiment. I have said that if I and those that think as I do are in the minority, that we will subordinate our personal notions and feelings to the wishes of those who are in the majority, and since the point has been suggested that there is no motion, let me make the motion then, if the Chair please, that it is the sense and desire of the joint session that Justice White and the other witnesses in the so-called Wirtner judgment matter shall be placed upon the stand and give their testimony in person.

THE PRESIDENT: The Chair would hold that this matter does not rest in the judgment of any one member of the joint assembly, but in the judgment of a majority of the joint assembly present.

MR. RAINES: Mr. President, I wish to ask the honorable gentleman from Broome whether he means by that motion to stop the reading of this evidence. It seems to me that if the evidence is read and goes into this record, that the examination of Justice White or the other witnesses, might be materially shortened when they do appear in person.

MR. MERRITT: Mr. President, it seems to me that before this motion is put, there should be some reason given why the evidence as in the record is not sufficient. What is to be gained by putting the witnesses on the stand? Delay will be gained for certain, because you have got to serve them and get them here. At least there should be some good reason why there is something to be obtained from them if here in person which the record does not show. Now, the attorney for the Legislature or the gentleman from Broome perhaps could give a reason for that. Otherwise it don't seem to me that such a motion should be carried by this joint assembly.

MR. PRESIDENT. Perhaps the Chair should state to the joint assembly that the Chair will rule, if the occasion arises, that the respondent is not compelled to go on with his defense until the Legislature has completed their evidence.

MR. BRACKETT: Mr. President, I want to submit for the consideration of the gentleman from Broome and to the members of the body that this is a matter entirely within the discretion and control of the gentleman on the part of the prosecution. Now, an indication from the tryer to the counsel that it would be satisfactory to have the oral proof instead of reading may be accepted or may not be accepted by the attorneys who are conducting the case. I don't suppose it is the province of the body to do more than indicate what it would like. By the direction of the joint body, counsel have been engaged and they are putting in such proof as they see fit, and it is upon the correctness of their judgment that the result of the case must finally depend. It occurs to me that the motion of the gentleman from Broome is not entirely well considered, and I hope he will not press it.

If he prefers, having heard such testimony given or put in as the counsel or management of the prosecution sees fit to put it, that something further should be put in, either oral or printed, he has the right to indicate that to the counsel and they will then act upon it, I assume; or he has the right of making up his judgment on the evidence or lack of evidence as the counsel has seen fit to leave it. It seems to me, therefore, that it is not really and truly, however much they may have the power, a part of the orderly procedure that the body should direct the counsel to produce the witnesses and put in the testimony orally instead of reading, as they have seen fit to start.

MR. COX: Mr. President, as one of those who suggested to Mr. Rogers that it would be more desirable to have this witness produced, I would like to say to the gentleman from St. Lawrence that I think it is of the utmost importance that, in connection with this testimony, as well as in connection with other testimony, that the connection of Justice Hooker with the matter shall be clearly established; and much evidence has been received here in this record, as I have read it, which does not in all cases connect Justice Hooker very closely with it, and as I have read this particular record it is somewhat indefinite, perhaps more so than the witness would make it if he were now upon the stand; and it is to cover that point that I have felt that he ought to be produced, providing more and definite evidence could be obtained from him if he appeared here in person. That is the point which occurred to me, and yet, as Mr. Rogers has suggested, I personally would be willing to abide by the majority opinion of the joint session.

THE PRESIDENT: The gentleman would be required to do that, as the matter is entirely within the control of the joint assembly.

MR. COX: I suppose I have a right to express my willingness, however, to be so controlled.

THE PRESIDENT: I assume the gentleman has.

MR. ROGERS: Possibly I ought to make the due point which I have a little more clear. I observed on Monday and yesterday that as we reached the evidence relative to this Wirtner judgment, if I may characterize that phase of the charges in that way, that we passed over it. I did not know the purpose of the counsel for the Legislature and his associates in doing that, but was left to my own inference. I drew the inference that those witnesses were to be put upon the stand, especially when I read in the papers yesterday, which was my only source of information, that the counsel for the respondent had requested subpoenas for several people, among the names of whom I recognized some who were connected with this proceeding. I thought until yesterday afternoon or this morning that perhaps there was an agreement between the counsel upon both sides that the witnesses in this matter should be put upon the stand, for it looked to me as if there were going to be sharply controverted questions of fact, and I supposed that the counsel upon both sides would want the witnesses here present. It was not until this morning, and, in fact, a short time ago, that I asked counsel for the Legislature what his purpose was, and was informed that it was to read the evidence, and Senator Raines then inquired of him what he proposed to establish or what he contended was established by this evidence, and he stated to us verbally that his contention was that the inference to be drawn was that charges of a greivous character were thereby established. That being so, and if it is the intention, as I only know from the names of the witnesses—if it is the intention of the counsel for the respondent to controvert some of the questions of fact or the inference of fact in reference to this proceeding, then I think it is fair to the body that we should have all of the witnesses physically present that we may here and see the conduct and the demeanor of the witnesses, as well as merely reading their testimony.

MR. SAXE: I rise to a point of order. <sup>o</sup>Rule 7 provides: "Decisions upon all motions, points and objections shall be made without debate unless twenty or more members of the joint ses-

sion shall ask that debate be had thereon." I do not understand that twenty have requested a debate upon this motion.

**THE PRESIDENT:** It is not a ruling upon admissibility of evidence or order of procedure; it is a motion by the gentleman from Broome that the reading of the evidence be suspended and the physical attendance of the witnesses be required. The question is on the motion of the gentleman from Broome.

**MR. BRACKETT:** Mr. President, this may have some bearing on the action of the gentleman from Broome: Counsel for the prosecution has a statement that he desires to make with respect to the subsequent attendance of Justice White.

**THE PRESIDENT:** If there is no objection Mr. Coman will make a statement.

**MR. COMAN:** I simply desire to make this statement, Mr. President, that if any portion of the testimony embodied in this record relating to the Wirtner judgment is put in issue by witnesses called upon behalf of Justice Hooker, it is the intention of counsel for the Legislature to require the attendance of Justice White personally and of every witness who has been sworn upon this matter in rebuttal.

**MR. ROGERS:** I withdraw the motion; I do not desire to press it unduly. I want to express my sentiments and that of others with whom I have conversed.

**THE PRESIDENT:** Motion withdrawn. ●

**MR. CARR:** What is the statement you made, Mr. Coman? (Statement read by stenographer).

**MR. PRESIDENT:** You may proceed.

**MR. STEVENS:** I will begin with the examination of Justice White, although one or two questions were read before.

**Q.** Justice White, you are a justice of the Supreme Court of the State of New York, are you? **A.** Yes, sir.

**Q.** And reside at Buffalo in the Eighth Judicial District? **A.** Yes, sir.

Q. You have been a justice of the Supreme Court for how many years, about how many? A. Why, if I remember, since January 1st, 1896.

Q. Do you recall the occasion when a judgment was granted by you in an action brought by Charles J. Wirtner against the city of Dunkirk, and other defendants? A. In a general way; yes, sir.

Q. When was your attention first called to that action, Justice White? A. I should say within a day or two, or three or four, at any rate, before it was tried.

Q. By whom? A. Justice Hooker.

Q. Where were you at the time when Judge Hooker called your attention to it? A. In Buffalo.

Q. In your chambers? A. I think I was.

Q. Will you state what Judge Hooker said to you upon that occasion, Judge White? A. In substance Judge Hooker said that there was a case coming down from Dunkirk or from Chautauqua county, in which he was personally interested, and asked me to hear the case when it came.

Q. Anything further? A. I perhaps ought to say, in that connection, as I remember it now, I was not holding the regular Special Terms at the time, although I possibly may have been.

Q. Well, on the day in question, Judge White, the counsel for the respective parties appeared before you did they, at your chambers? A. On the day of the trial?

Q. On the day of the trial, the 21st of January? A. I remember distinctly the presence of Mr. Stearns and there were several people who I was given to understand were interested in the litigation, present at that time. Mr. Stearns and Mr. Larkin, I think were present and Mr. Larkins and Mr. Stearns are the only two that I distinctly recollect.

Q. Do you remember whether Mr. Farnham was there? A. Well, I am inclined to think that he was; I may be mistaken, however.

Q. The record recites that he was there, the stenographer's minutes. Mr. Stearns was sworn as a witness, was he? A. I

don't remember distinctly whether he was or not, independent of the record.

Q. I will go back a little, Justice White, and ask you whether there was any further conversation between you and Justice Hooker at the time you have referred to, any further conversation than that which you have given? A. As I remember Judge Hooker simply asked me to hear the case and, as I remember he said that he didn't think there would be any substantial contest in court; that was the substance of it; that the parties were coming down to try it and that it wouldn't take long, is all I think.

Q. I will ask you, Judge White, to state fully as you remember just what did take place on the day of the trial? A. The parties came to chambers, as my stenographer, and as I believe was the fact, instead of in the regular special term room. I directed them to go before the stenographer and after swearing, to make their proofs. Mr. Stearns had stated to me when the trial commenced, that the parties had substantially agreed upon what should be done in the case; and personally I do not believe that I sat at the table where the stenographer was taking the minutes very much of the time while those witnesses were being sworn.

Q. You may proceed, Justice White, with anything further that took place on that day that you recall? A. All that I have in mind that I have any desire to state.

Q. No, I am asking you, Judge White, to state anything further that you recall that took place there? A. I have no recollection of anything in particular.

Q. Do you remember signing the findings of fact and the conclusions of law? A. I do.

Q. Did you sign them on the day that the hearing took place? A. I don't think so; my recollection is that I did not, and yet I am not so sure about that; it may have been.

Q. I wish you would look at the judgment roll, or the certified copy, Judge White, and see if that will refresh your recollection in that respect, A. It purports to have been signed on the same day, is the idea.

Q. Yes, sir. A. That doesn't help me in any way, to fix it more



definitely; it may have been signed that day, or it may have been signed the next; that wouldn't help me, Mr. Coman.

Q. Perhaps the filing might help you? A. No.

Q. The certificate by the clerk, as you will observe, Justice White, bears date on the same day? A. I see it does.

Q. And would that be any aid to your recollection? A. It would indicate, of course, that it was done on that day, but I am not positive whether it was or whether it was not; independently of the paper I couldn't tell you.

Q. Did you read the findings of fact and conclusions of law in this case, before signing them, Justice White? A. I did not, sir; for the reason that it was stated to me that they had been agreed upon by the parties; presented by Mr. Stearns and I did not read them.

Q. And when was your attention first called to what actually contained in the findings of fact and conclusions of law which you had signed, Justice White? A. The first idea that I had upon the subject came to me by way of a report from a gentleman that I employed to examine the records. My recollection is that it was—in fact know it was, while I was holding court in Cattaraugus county. Now whether it was last year, that would have been 1904, or the year before I can't say.

Q. You have heard the stipulation read in evidence here have you not? A. I have.

Q. Did you have any conversation with Judge Hooker? A. Never.

Q. Upon the subject of this stipulation? A. Personally never.

Q. Have you had any conversation with Justice Hooker concerning this stipulation, or concerning this action, or the judgment since the date of the judgment? A. Personally not a word.

Q. For my own information, Judge White, I would like to ask you what you mean by "personally"? A. I haven't spoken to Judge Hooker upon the subject.

Q. I will ask you, Judge White, who you asked to talk with Judge Hooker about this case? A. First?

Q. Yes, sir. A. Arthur C. Wade.

Q. Anybody else? A. Well, not first.

Q. Later? A. Towne, of Silver Creek, George E. Towne, of Silver Creek, later.

Q. And that is all, Judge White? A. The question perhaps, in a way, is misleading. I didn't particularly ask these gentlemen, or either of them to see Judge Hooker, in that language.

Q. You may state, in your own language, Judge White, what you did do in that regard?

"Q. You may state in your own language, Judge White, what did you do in that regard?" A. I drew the stipulation when it came to the point of having the stipulation.

Q. And after you had drawn the stipulation what did you do with it? A. I sent it, or handed it, one or the other, either to Mr. Wade or to Mr. Towne.

Q. And was it subsequently returned to you by one of those gentlemen, signed? A. Subsequently returned to me by Mr. Towne, signed.

Q. And upon that stipulation you entered the order which had been drawn in advance? A. I did.

Q. Did you ever receive any written communication from Justice Hooker upon the subject? A. Never on this subject. No, sir.

Q. Did Justice Hooker, when he suggested that you hear this case, give any reason for desiring that you should hear it? A. None, except that he was interested; and my recollection is now, as you speak of it, that he was holding the regular special term at the time; I think he was; and yet that may be a mistake.

Q. Have you no recollection whether Justice Hooker was present at your chambers on the day when this judgment was entered? A. I do not remember that he was.

Q. Did Justice Hooker say to you that the case involved his property, or anything to that effect? A. Oh, no. Well, he didn't use any such language as that.

THE WITNESS: As I have said before, he did say that he was interested in the litigation; that was the only thing.

By MR. WHITNEY:

Q. Was Mr. Justice Hooker holding court there at that time?  
A. Well, as I say, my recollection is that he had the regular Special Term, but his recollection may be better than mine.

Q. This is in the city of Buffalo? A. Yes, sir; but I am not sure as to how that was.

By MR. CAHN:

Q. Judge, to the best of your recollection, at this time, what other Supreme Court judges were then holding court in the county of Erie? A. Oh, I can't tell you without looking back at the calendar.

Q. Was there anyone else present besides you and Judge Hooker at the conversation in your chambers? A. I don't think so.

Q. Did he give you the title of the action? A. The facts?

Q. The title? A. No, sir; not that I remember.

By MR. FISH:

Q. Judge, do you remember whether your request to Mr. Wade and Mr. Towne was in writing or orally? A. I think that whatever was done between myself and Mr. Wade was opened or commenced by a letter from me to Mr. Wade.

Q. How was it in regard to Mr. Towne? A. I think Mr. Towne came in—I don't know whether this is competent or not.

Q. Well, I don't ask you for the conversation? A. I think he was—in fact, I understood from both of them that he was co-operating with Mr. Wade and that he finally took hold of the matter and closed it up.

Q. I don't ask you for any of the conversation? A. Oh, no; that is the substance of it.

By MR. SHANAHAN:

Q. Judge White, in the conversation which you had with Judge Hooker, were the facts discussed—the facts? A. The facts of the case?

Q. Yes. A. Not at all; not at all.

Q. Did you know that Judge Hooker was a party defendant?

A. He told me that, or told me that he was interested; I assumed upon his statement that he was.

Q. You assumed that he was a party defendant? A. I assumed that he was from his statement that he was interested in the litigation before the case was presented; and, of course, then I learned that he was for a fact.

Q. But your recollection is not sure as to whether on that day he said to you that he was a party defendant? A. I don't think he used that language; I don't think he has ever used it to me; it turned out that he was a party defendant.

By MR. CAHN:

Q. Judge, when you say he said he was interested, did he say in what way? A. He said he was interested in the litigation.

Q. But he didn't say in what way he was interested? A. Oh, no.

Q. Judge, do you recall when Mr. Stearns stated to you that the findings of fact had been practically agreed upon—I understand that to be your explanation—whether Judge Hooker was present? A. Oh, he was not present, to my recollection.

By MR. COMAN:

Q. Well, did you first speak to Mr. Wade about that subject, or he to you? A. I spoke to him.

By MR. MEAD:

Q. What about Mr. Towne?

By MR. COMAN:

Q. And what was it with reference to Mr. Towne? A. Mr. Towne, as I say, he came into the case afterward, at the suggestion of Mr. Wade, as I understand it.

Q. And did you ask those gentlemen to communicate with Justice Hooker on this subject? A. Not in that language or anything like it.

Q. I am not asking for any particular language, Judge; but did you ask them to see Justice Hooker and talk with him about this matter?

THE WITNESS: As you ask the question, I think it would have to answer that no.

Q. Justice White, what, if anything, did you request either of those gentlemen to communicate to Justice Hooker? A. Mr. Coman, I didn't put it in the form of a request to either of those gentlemen.

By MR. COMAN:

Q. Now, Judge, that is broad enough, isn't it, to cover it? A. At the expiration of a considerable period of time after I had learned what I supposed the facts to be, I wrote a letter to Arthur C. Wade. Arthur C. Wade came to the Iroquois hotel and I had an interview with him there. We discussed the case and what had been done and I said in substance to Mr. Wade that from the best information I could get that the litigation should not have been disposed of in the way that it was, and that I wanted the matter placed right as soon as it could be done, and I thought that it was due to Justice Hooker, to myself, and to everybody concerned in it that it should be. Mr. Wade said he would take the matter up and that it should be made, as I thought then was right, and as he agreed was right, and that the right thing to do was to vacate the whole proceedings. Mr. Wade and I, after that, had some correspondence and I think that we met perhaps once or twice and circumstances were such that after a while he said that Mr. Towne would take hold of that matter and close it up. I soon thereafter communicated with Mr. Towne; we went over the case and he said that he had an understanding that he was to close it up and that he would do it; and in accordance with the understanding after a while it was done. That ended it.

Q. Was it a considerable time, Judge White, after you first spoke to Mr. Wade before this stipulation was filed? A. It was a considerable time.

Q. About how long? A. Well, I can't say, but it was—let's see, the order was made in November, the stipulation was signed when?

Q. The 2nd of November, yes, November 2nd, and the order November 25th. A. I am inclined to think it was over a year, some, but upon that subject I would take the recollection of Mr. Wade himself in preference to my own, as I have made no effort to ascertain in any other way, except by my independent recollection.

Q. Were you, at any time, informed by Mr. Wade as to whether or not he had had any conversation with Justice Hooker upon this matter?

THE WITNESS: What I think I had more than once, but I have no definite recollection as to what either he or I said on any of those occasions.

MR. CARR: I think, Mr. Stevens, what took place there in regard to the matter, although it is not evidence, ought to be read.

MR. STEVENS: Very well. (Continuing.)

By MR. COMAN:

Q. Who was Mr. Wade acting for? A. Well——

MR. CARR: How is it this witness assumed to know?

MR. STANCHFIELD: That certainly would call for a conclusion.

MR. FISH: It appears that he was acting at the Judge's request.

MR. STANCHFIELD: According to the record he would be counsel for Judge White.

MR. COMAN: I assume that he was acting for both of them.

MR. STANCHFIELD: No one has any right to assume he was acting for us.

By MR. COMAN:

Q. Now as to Mr. Towne, did Mr. Towne at any time state to you that he had had conversation with Justice Hooker upon this subject? A. Yes.

Q. More than once? A. Yes.

Q. How many times? A. Well, I don't know.

MR. STANCHFIELD: We object to that as hearsay and incompetent.

By MR. COMAN:

Q. You are unable to say how many times, Judge? A. Yes.

Q. How long was it after Mr. Towne became connected with the matter before the stipulation was finally delivered to you? A. Well, now Mr. Coman, I really can't tell you that, but I would say maybe six months, maybe three; I really couldn't tell you definitely.

Q. Justice White, at the time when you first talked with Mr. Wade about this matter, was it within your knowledge that the proceedings before the grievance committee of the Bar Association were pending and that Mr. Wade was acting as Justice Hooker's counsel in that proceeding? A. Oh, I don't remember that any proceedings were pending before the Bar Association at the first; my recollection is that that came along after, but I have no definite recollection about that—Oh, I beg your pardon, wait a moment.

(Stenographer repeated last question.)

WITNESS: Oh, yes, surely.

By MR. COMAN:

Q. That is true, is it? A. Yes.

MR. COMAN: I have stricken out in my record all the testimony of the gentleman relating to the correspondence which was not introduced in evidence. Do you desire to have it read?

MR. CARR: There is one thing, Mr. Coman, because he afterwards came back and fixed the date when he first talked with Mr. Wade as being in May of the year when the stipulation was prepared.

MR. COMAN: That is true.

MR. CARR: That he afterwards did.

MR. COMAN: That is true, that may be taken by agreement.

MR. CARR: I call attention to that when you say the correspondence is to be stricken out. He fixed the date from that.

MR. COMAN: There was no correspondence to be stricken out. This discussion that was had relative to the correspondence. I don't care to have that read unless you do. You may fix the date, you have correctly stated it.

MR. STEVENS: That brings us down to the cross examination by Mr. Stanchfield, he appears to have questioned the witness, Mr. Carr. The bottom of page 380 is where the cross-examination begins.

SENATOR GRADY: The question about the correspondence is omitted?

MR. COMAN: Yes, because the correspondence was not used or placed before the committee.

SENATOR GRADY: That is where the omission begins, with the question, "Have you with you, Justice White, the correspondence between yourself and Mr. Wade and Mr. Towne"?

MR. COMAN: Yes.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Judge, I think you had been prior to 1894, a Judge of the Superior Court of the City of Buffalo? A. Prior to 1896, yes.

Q. Prior to 1896? A. Yes.

Q. And you are constitutionalized a Supreme Court Judge? A. Yes.

Q. And thereafter elected to the Supreme Court bench? A. Yes.

Q. So that you have had a good many years of judicial experience? A. About 12, I think.

Q. And all classes of cases came before you, both civil and criminal? A. Yes.



Q. Now this case, to which your attention has been called, was tried before you in January, 1902, according to the record?

A. It seems so.

Q. At that time Warren B. Hooker was a Justice of the Supreme Court? A. Yes.

Q. From the same judicial district in which you were acting? A. Yes.

Q. Now is there a court house or building in the City of Buffalo in which the various Justices of the Supreme Court who have business in that city perform, and functions to fulfill have their offices? A. I don't know quite what the question—

Q. What I mean, is there a building in the City of Buffalo in which the various Judges of the Supreme Court who are performing their duties there, meet and have offices? A. Why, there is a City and County Hall and in the City and County Hall, Mr. Stanchfield, there is what is called Supreme Court chambers.

Q. Now, doesn't each individual judge that is there, call it a stall, if you will? A. Well, stall, that is a good word.

Q. Well, what I mean to say, that it doesn't obtain to the dignity of the chamber; it is a stall?

MR. CARR: An alcove.

THE WITNESS: It is a little room off each one.

By MR. STANCHFIELD:

Q. There is one for Judge Haight? A. Yes, that is the spacious chamber.

Q. He has the swell one, I assume, because of his rank?

MR. STANDART: Says he has the big stall. Now, Judge Hooker, when he was there, had one? A. Surely.

Q. And you had one? A. Surely.

Q. Now, at that time when you had this conversation that you have related with Judge Hooker, he was, according to your recollection, regularly holding court there in Buffalo? A. I think so; I say I wouldn't be sure.

Q. And his room adjoins yours? A. Yes, sir.

Q. So that he could see you any moment by simply stepping out of his stall into yours? A. Yes, sir.

Q. Now you recall, I take it from your answer to Mr. Coman, having some conversation with Judge Hooker about the trial of this case, the substance of which you gave us? A. Yes, I think so.

Q. The substance of which you have given us? A. As I remember it.

Q. Now, I take it, would not assume to give the exact language used by either of you? A. Not the precise words.

Q. Now, do you recall whether that conversation took place, did it, in either your room or his? A. I am inclined to think it did. I should say probably in my room.

Q. Now you understand from him in that conversation, that the lawyers and parties to his litigation were desirous of coming before you by consent? A. I think that is true; I don't say "desirous" of coming before me.

Q. Wanted to? A. Well, that is fair.

Q. If I don't use the right word, Judge, you correct me. They wanted to come before you by consent? A. Yes.

Q. In other words, neither attorney could have compelled the other by notice to come before you and try it? A. I think that is true.

Q. And Judge Hooker told you that the case was one, as I recall your evidence, in which he was interested? A. Yes, sir.

Q. Now, didn't you understand from his remark that it was a case in which he was a suitor? A. I did; that is, I assumed that.

Q. I am asking you that; you inferred that? A. Yes.

Q. You, of course, know that if he was a suitor in the case it could not be tried before him? A. Certainly.

Q. And the reason of the speaking to you by Judge Hooker was that you were not engaged in holding court upon that day and he was disqualified by reason of the fact that he was a suitor? A. Well, I am inclined to think, Mr. Stanchfield, that I was holding a trial term at that time, but I wouldn't be certain of that, but I think so; that is my recollection.

Q. Well, were you holding a trial term at the particular time when this case was tried before you? A. Not perhaps at the precise moment, and yet in that respect I don't think I was present in the room all the time that this action was being tried even.

Q. In any event, so far as Hooker was concerned, you knew he couldn't try it? A. Certainly.

Q. And you consented to take cognizance and jurisdiction of it? A. I did, to please him.

Q. Now there was no suggestion in this conversation to you from Judge Hooker, of what were claimed to be facts in the case? A. Not the slightest.

Q. You would have recognized at a glance then, and would know the gross impropriety of your taking jurisdiction of a cause where anyone had attempted to outline for you the faults in it? A. Why in a general way, yes; certainly.

Q. Now there came a time, according to the record, January 21, 1902, when the attorneys for Charles J. Wirtner, the plaintiff and the attorneys for the defendants, some of them, in this litigation, appeared before you? A. Yes.

Q. Your record discloses both the findings and the judgment that you were attended at that time by Thomas H. Larkin, representing the plaintiff? A. My recollection is that Larkin was there.

Q. The attorney for the plaintiff, and that there was also present upon the other side, attorneys? A. Why, Mr. Stearns; Mr. Stearns was certainly present at the trial, so far as I remember it.

Q. Wasn't there present also at the time Mr. Elton D. Warner? A. Well, I don't remember that Warner was present, although he may have been.

Q. Well, I call your attention here to the stenographic proceedings of what took place: "Appearances, Thomas H. Larkin, Esq., for the plaintiff; Elton D. Warner, Esq., and B. E. Farnham, for the defendants Sterns and Hooker? A. Yes; but in that connection I could not say whether the announcement was made

by Warner himself as to his appearance, it may have been, that whole announcement may have been made by any attorney in the case.

Q. To the stenographer? A. To the Court, yes, and taken by the stenographer.

Q. Now it is a fact that upon that trial before you record evidence was introduced? A. Yes.

Q. Stipulations as to facts were introduced? A. I believe so.

Q. And parole testimony was given? A. I believe so; yes, sir.

Q. In the regular way of judicial procedure? A. Why I suppose it was regular; perhaps I wasn't paying the attention to the matter that I should have paid, and in that respect it may have been a little irregular.

Q. Just answer my questions. I will get at that later. You were appraised by some one of the attorneys there that there was no contest over the facts, were you not? A. I think that was announced.

Q. Judge Hooker himself never came near the trial? A. I don't think so; at least I have no remembrance of seeing him there.

Q. Was not a witness, and you have no recollection of his being in the room? A. None at all.

Q. And there never had been received by you from him any hint or suggestion, had there, as to the kind of a judgment that was to be rendered? A. Not the slightest.

Q. Now after this testimony was taken there were findings of fact submitted to you for your signature? A. Yes, sir.

Q. And conclusions of law? A. Yes, sir.

Q. And based upon those findings of facts and conclusions of law, a judgment? A. I understand so, certainly; yes.

Q. All of them were submitted to you and received your signature? A. Oh, I don't believe that the judgment was submitted to me. It may have been.

Q. The findings of fact and the conclusions of law were signed by you? A. Yes, certainly.

Q. I don't think the judgment was? A. Sometimes judgments are O. K'd in that way, where there is a disagreement, especially between the counsel, but I don't think I O. K'd that.

Q. This judgment is signed by J. D. Gallup, as clerk? A. Clerk, yes.

Q. And entered at the special term January 21, 1902? Now whether those findings of fact and the conclusions of law were actually signed by you upon that precise date you are unable to remember? A. I don't remember distinctly.

Q. They may have been handed in to you afterwards by counsel and signed, as of the date when the trial occurred? A. Possibly.

Q. Either course might have been pursued in that respect? A. Might have been.

Q. Now that was in 1902. Did you at that time pay any particular attention as to the character of this action or the results that were to be, or expected to be attained from it or by it? A. I did not, I am sorry to say.

MR. STANCHFIELD: I ask to strike that out.

MR. COMAN: I object.

MR. FISH: Let it stand.

MR. STANCHFIELD: I ask to strike it out as not responsive, when I asked him if he paid any attention to the character of the case, it is not responsive for him to say "I am sorry I did not"?

MR. FISH: Not entirely so, but let it stand.

THE WITNESS: I think I won't apologize now, Mr. Stanchfield, even to you in that respect.

MR. STANCHFIELD: It is not a matter of sentiment, Judge White, quite; it is simply a matter of cold fact. I am not dealing with the sentimental side, or the reasons that might have actuated you later. It is a matter of fact that you paid no particular attention to the pleadings in the case or the judgments sought to be obtained?

THE WITNESS: That is a fact.

MR. STANCHFIELD: I think I will read the explanation that follows here.

MR. STANCHFIELD: It had got into the case and it is conceded history that wouldn't harm anybody. This was a taxpayer's action to restrain the city of Dunkirk and Lester F. Stearns and Warren B. Hooker, who owned the ground upon which the post-office building was situate, the city from executing to Hooker and Stearns a lease of about 15 feet of city property lying alongside this postoffice building and to enable Hooker and Stearns to maintain the property with a sufficient access of light and of air upon that side.

Now a man by the name of Hogan introduced in the Common Council of the city of Dunkirk a resolution, after Hooker and Stearns had built this building, to the effect that the city should build right up against it, shutting off light and air, a fire department building, and a petition was presented by a great many citizens in Dunkirk to the Common Council memorializing the Council not to pass that resolution. As a sort of an antidote to it a resolution was introduced in the Common Council in the city of Dunkirk by a member to the effect that there should be a lease made by the city to Hooker and Stearns of this 15 feet, giving them the right to light and air, to endure over such a period of time until the city of Dunkirk had grown large enough as a city to necessitate the use of that 15 feet for the purpose of a City Hall. Now that resolution for a lease of that general character was passed by the Common Council of the city of Dunkirk, it was vetoed by the mayor of Dunkirk, returned to the Common Council and passed over his veto. Then this taxpayer comes in upon the theory that to execute that lease would be a waste of the municipality of the city of Dunkirk, if it were executed, and that the city ought to get pay from Hooker and Stearns for it.

Now that is what this suit is, which is brought against the city of Dunkirk and Hooker and Stearns.

Now the city of Dunkirk never appeared in the suit at all. They were served with a summons and complaint. They never appeared and they never answered, so that there was no issue joined as be-

tween Wirtner, the plaintiff, and the city of Dunkirk. Now Hooker and Stearns did appear and did answer.

Now I wanted you to understand this whole situation in the light of what will develop probably later on the cross-examination of Judge White. I want to call your attention to section 521 of the Code of Civil Procedure, which reads as follows: "Where the judgment may determine the ultimate rights of two or more defendants as between themselves;" now you will get the notion, here was the city of Dunkirk as one defendant and Hooker and Stearns the other defendant; the plaintiff was Wirtner; it is a triangular fight; that is in brief what it was; "where the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires such a determination," that is between himself and his co-defendants, "may demand it in his answer and must at least twenty days before the trial serve a copy of his answer upon the attorney for each of the defendants to be affected by the determination and personally or as the Court or Judge may direct upon defendants so to be affected, who have not duly appeared therein by attorney."

Now, in other words, thus if Hooker and Stearns in their answer in this litigation demanded any relief affirmative in its character against the city of Dunkirk, in order to lay a foundation for them to get that relief they must have served on the city of Dunkirk twenty days before the trial a copy of their answer. Now that is what this code requires.

MR. COMAN: Mr. Stanchfield, may I ask a question?

MR. STANCHFIELD: Surely.

MR. COMAN: Is it your understanding that any affirmative relief was asked for in this case?

MR. STANCHFIELD: No, I don't admit that. I am outlining this whole situation. I don't say whether it was or it was not.

MR. FISH: Mr. Stanchfield, avoid, as far as possible, at the present time, any argument; a statement of just what you said, you were going to state, of just what this action did.

MR. STANCHFIELD: I am only stating the facts of the appearance and the action which was applicable, so as to make interrogations intelligible to the committee. If I transgress your sense of right you will overrule me.

By MR. STANCHFIELD:

Q. That was the nature of the action. We put it in answer Hooker and Stearns, alleging that the lease that the Common Council of Dunkirk had voted, was a valid, legal, official act upon the part of the village. Now that is the situation of that case. Now, Judge White, you stated in answer to my last question that you didn't give any close attention to the matter or nature of this controversy; you said in answer to an inquiry from Mr. Coman that a long time afterward you had some report in reference to this judgment? A. Yes.

Q. How long afterwards? It was granted in January, 1902? A. Well, I couldn't say, Mr. Stanchfield, whether it was a year ago this spring or two years ago this spring, now.

Q. Well, that would be, in any event, somewhere in the neighborhood of two years after it had been tried before you, 1902?

A. No, one year, a little over, wouldn't it, possibly?

Q. Well, a year or two anyhow? A. Yes.

By MR. FISH:

Q. One year and two or three months, or two years and three months? A. I think it was one of these. ●

By MR. STANCHFIELD:

Q. Now did the report or rumor that you got as to this judgment come to you from the newspapers? A. No, sir.

Q. It was some one that you sent there to the Clerk's office in Chautauqua county? A. Yes, sir.

Q. How did you come to send it; that is, at whose suggestion did you send anyone there? A. My own.

Q. Now you say, in answer to my question, it was at your own? A. Yes, sir.



Q. Before you took the initiative of sending anyone there had your attention been called to this judgment by anything you had seen in the newspapers, or any communication to you from any source? A. Not particularly and specifically to the judgment itself.

Q. It was the judgment itself? A. Not to the judgment itself.

Q. Not from the judgment? A. Not to the judgment. You ask if my attention had been directed, didn't you, to the judgment specifically?

Q. Well, had your attention been called to the subject matter of the controversy? A. When I took the initiative?

Q. Yes. A. Not by any person except the operation of my own mind.

Q. Well, was your mind set in motion, or set to work by virtue of comments upon the case that you had seen in the public press. A. This case?

Q. Yes. A. No, sir.

Q. Now, did you have in your mind at that time that this judgment was in any way resting as a lien or a cloud upon the city of Dunkirk? A. That phase of it didn't occur to me.

Q. That phase of it didn't occur to you? A. No.

THE PRESIDENT: We will suspend now. The joint Assembly stands adjourned until 2.30.

At the hour of 1 o'clock the President and the Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate stand in recess until 2.25 o'clock p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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#### TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The hour of 2.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber.

## JOINT SESSION—ASSEMBLY CHAMBER.

THE PRESIDENT: Proceed Mr. Stanchfield.

Reading from the testimony of Hon. Truman C. White, as giving before the Assembly judiciary committee, commencing at the bottom of page 390, was then continued, Mr. Stanchfield reading the questions and Mr. Westwood the answers.

Q. Now what phase of it was ever addressed to your attention?

A. Which phase of it?

Q. That the judgment might be construed in some way to affect the interests of the city of Dunkirk? A. No. I thought it might affect the interest of the city of Dunkirk; that is, I had a suspicion that it might when I took the initiative.

Q. Now it was a fact, was it not, that in some way, either by your own mental operation, or by information conveyed to you, that you thought this judgment might affect the city of Dunkirk, that you set in motion proceedings to have it discontinued or set aside? A. Why, when I took the initiative and set on foot the investigation concerning the matter I don't know that I had any thought upon that subject, but I was in a condition of mind where I wanted to ascertain whether it had or not.

Q. Well, whether it would affect the city of Dunkirk? A. Yes.

Q. Now did you examine the judgment roll? A. Personally?

Q. Yes. A. Before any investigation?

Q. At any time? A. No, sir; I don't believe I have ever examined the original judgment roll.

Q. Well, what did you want it set aside for then? Why were you anxious to get it set aside if you didn't think that in some way a judgment had been entered there affecting the city of Dunkirk it ought not to have been entered? A. Oh, I didn't think that after I had investigated it.

Q. How could you tell whether it affected the city of Dunkirk if you didn't look at the judgment? A. I had a report made upon the judgment contained and the proceedings leading up to the judgment.

Q. Was that a report from a lawyer? A. Yes, sir.

Q. Who was it? A. Mr. Green, of Jamestown, a district attorney.

Q. He was a district attorney of Chautauqua county? A. Yes, sir.

Q. Did he send you a copy of the judgment? A. I don't think he sent me a copy; I think he sent me a report upon the matter.

Q. Have you got it? A. Yes, I think I have.

Q. Here? A. Yes.

Q. Let me look at it, I mean if you have no objection? A. I haven't the slightest objection to telling you all that I know about it. I think this, Mr. Stanchfield, is what I received upon the subject. (Handing paper to Mr. Stanchfield.) I think it is.

Q. Now, you get that report back from the District Attorney of Chautauqua county? A. Yes.

Q. You yourself, then, never looked over this judgment roll or the judgment? A. The original judgment?

Q. Yes. A. Yes, sir.

Q. Or a copy of it? A. I can't say now whether I have ever seen a copy of it; I don't believe I have. -

Q. And you never have looked to see what the proof was, as to who appeared in the action, who defaulted, or who in any way were legally before you? A. In a general way I inquired of my stenographer concerning those facts, but as to the details of it I can't tell you.

Q. Well, now, there is no pretense in any one of the findings that you signed that any answer of Hooker and Stearn's was ever served upon the City of Dunkirk, is there? A. I could not say; I suppose the paper will show for itself.

Q. Well, why did you take an interest, Judge White, in having a judgment vacated unless there was something in the findings that were against the evidence or that were incorrect, or that you had been imposed upon by the evidence? A. Why did I, if I hadn't?

Q. Yes. A. Why, I didn't, from any point of view. I think I have answered the question as well as I can. It involves the proposition that I hadn't been imposed upon, etc., as you put it, as I understand it.

Q. In other words the record before you at that time in no way assumed to disclose that service of the answer had been made upon the City of Dunkirk? A. I take that for granted; this is the first time I have heard that particular point spoken of.

Q. Now, the plaintiff Wirtner, and the defendant Hooker and Stearns, by their answer, were of course, before you? A. Why, I suppose so, if they answered.

Q. You don't think, Judge White, after I have read section 521 of the code, that you could upon these pleadings have rendered any judgment which would have affected the City of Dunkirk, do you? A. Well, I don't know.

Q. Well, how could you have done it; how could you in any way, there being no proof before you of service of the answer upon the City of Dunkirk, how could you have rendered a judgment that would have affected the City of Dunkirk? A. I don't know that I could upon its merits, but if the judgment stood there it might be claimed that it affected it.

Q. How could it affect the City of Dunkirk if the City of Dunkirk had never been heard? A. I don't know that it could affect it at all.

Q. You grant me that it is true, do you not, that Stearns & Hooker could get no relief against the City of Dunkirk unless they had served upon it a copy of their answer? A. I don't think now that they could have gotten any relief legitimately and legally.

Q. Without having served a copy of their answer? A. Yes.

Q. And either at that time, nor in the record was there ever any pretense made to you that such an answer had been served?

A. No, I don't think any particular pretense was made about anything connected with the case.

Q. When the trial took place, were you not informed by somebody there, by the lawyer either for the one side or the other, that the facts had been virtually agreed upon? A. I think so; that is as I remember it.

Q. And that the taking of the proof was a mere matter of form? A. Well, perhaps not merely so, but substantially.

Q. Well, you state it in your own way? A. I think that was talked.

Q. Substantially a matter of form? A. Yes.

Q. There were no objections made to the introduction of testimony? A. That I couldn't say without looking at the testimony, I presume; I don't think there was.

Q. And don't you remember that most of the material facts with reference to what took place before the Common Council of the City of Dunkirk were put in by stipulation and consent? A. I am inclined to think that is true, Mr. Stanchfield, but I couldn't tell you the detail from present recollection; impossible.

Q. Now, after that judgment was brought to your attention, weren't you, in seeking to have a stipulation made setting it aside, actuated by your anxiety or solicitude that you had rendered a judgment there that might in some way improperly or injuriously affect the interests of the city of Dunkirk? A. Partially, perhaps that.

Q. Was not that the only inspiring motive? A. Oh, no; no, sir.

Q. Now you say it was not? A. No, sir.

Q. Now, the evidence with reference to every other issue and every other party to this record was taken there, you say, by consent? A. Of the parties?

Q. Yes. A. Oh, certainly.

Q. Now, what other provision is there in that judgment that struck you outside the court room as improper, other than its affect perhaps upon the city of Dunkirk? A. I felt—

Q. Not what you felt, but what provision in the judgment? A. What I thought, you mean?

Q. Well, I don't want your feelings; but I say, what provision in the judgment struck you as improper outside of the one you said that caused you fear that it might affect injuriously the city of Dunkirk? A. I could not answer that question specifically, nor without again reading the report of Mr. Green, which I haven't read in—

Q. Well, would you attach more importance to the report of a lawyer as to what he thought of a judgment, than you would to your own, who rendered it? A. Oh, no; I didn't attach much

importance to what he thought of it; the importance that I attached to it was the facts.

Q. You yourself have not then in mind any other feature or provision in this judgment that impressed you as irregular, that you could give us now? A. I could not state it specifically now, no, sir.

Q. Well, if you had anything I would like to have it; if you haven't; that ends it. A. I haven't in mind any specific point.

Q. Then the only tangible thing that you have,—there is nothing in that report that we have any objection to if any of the committee want to look at it.

Q. So that so far as you are able to state, having granted this judgment of the court, you instituted proceedings to have the judgment set aside? A. I certainly did.

Q. Have you no other reasons, that you are now able to state, than that you believe it affected injuriously the city of Dunkirk? A. Oh, not by any means; that isn't the sole reason.

Q. Well, what other reason, in your judgment, was there? A. Oh; not in the judgment; the reason existed in my consciousness.

Q. Then it is reasons upon the outside? A. No, sir; it is reasons of my own, based upon my consciousness of what I think, or thought, was right or wrong in the administration of the law.

Q. Well, now you said to Mr. Coman that you didn't regard this judgment as right? A. I did not.

Q. Why? A. Well, as I say, I couldn't point out.

Q. Oh, yes you can. A. No, I cannot.

Q. Well, I beg your pardon. A. Well, I beg yours; I can't point out specifically at this time.

Q. Wait a minute. You say, Judge White in the first place to me that the legal reason for setting it aside was that you were afraid that it might affect injuriously the city of Dunkirk? A. I said that was one reason.

Q. Now, I ask you for the other reason and you say your own consciousness suggested to you that the judgment was not right? A. Yes.

Q. Now, I want to know what they were? A. As I say I cannot point out specifically for the reason for that.

Q. Then you give them generally.

THE WITNESS: Without reference to the report of Mr. Green, for one thing.

By MR. STANCHFIELD:

Q. Take it; there it is, right there. A. Now, what do you want?

Q. I want you to give another reason than that you thought it affected the city of Dunkirk?

THE PRESIDENT: Do you wish to have the report read, Mr. Stanchfield?

MR. CARR: Why may it not go in the record without not reading it?

MR. COMAN: It is a part of Justice White's examination and without it some portions of his examination are not intelligible, I believe.

THE PRESIDENT: It will be read.

Mr. Westwood reads it, as follows:

# SUPREME COURT.

CHARLES J. WIRTNER,

*vs.*

DANIEL SCANNELL, Mayor of the City of Dunkirk, THE CITY OF DUNKIRK, LESTER F. STEARNS and WARREN B. HOOKER.

FACTS CONCERNING THE PROCEDURE IN ABOVE ENTITLED  
ACTION—1901.

Dec. 19. Complaint verified this day and summons dated same day.

Dec. 20. Undertaking for temporary injunction acknowledged and sureties verified.

Dec. 21. Temporary injunction granted by Justice Keneflick restraining defendants until further action of the court; also that the defendants show cause at the city and county hall in the city of Buffalo, on the 30th day of December, 1901, at ten o'clock in the forenoon, why the injunction should not be continued during the pendency of the action. Copy of the order to be served on the mayor, clerk of Dunkirk and either Lester F. Stearns or Warren B. Hooker on or before December 26, 1901.

Dec. 23. Summons, complaint, affidavits and injunction order served on defendants Daniel Scannell, mayor of the city of Dunkirk, Jacob P. Groesch, city clerk, and upon city of Dunkirk.

Dec. —. Summons, complaint, injunction and undertaking served upon six members of the common council, and Lester F. Stearns, in the city of Dunkirk, as appears by affidavit of W. J. Evans, verified the 20th day of January, 1901, but no date of service is mentioned in the affidavit. Date of verification of this affidavit is presumably error for 1902.

Dec. 30. Answer by defendants served December 23, 1902. January 12th twice for city of Dunkirk, to answer expires this day.

Jan. 21. Case tried at Buffalo before Justice Truman C. White, decision rendered and signed the same day. The findings of fact were drawn upon the same typewriter as the answer of the defendants Stearns and Hooker, and were evidently prepared before going to Buffalo. The date of trial is stated in typewriting to be January 13, 1902, but the 13th is erased with pen and ink and the figures "21st" inserted with ink over the erased typewritten "13th."

1. The papers on file do not show that there was any hearing upon the return of the order to show cause why the temporary injunction should not continue during the pendency of the action on the 30th day of December. The decision of Justice White contains for its first conclusion of law the following:



"First. That the injunction heretofore granted in this action be and the same is hereby vacated and set aside." From this it is to be inferred that no hearing was in fact had.

2. The only papers served upon the city of Dunkirk or any officer thereof, so far as appears from the record, were the summons and complaint, temporary injunction and papers upon which same was issued. It does not appear that the answer of the defendants Stearns and Hooker was ever served upon the city or any officer thereof.

3. The change in the date of trial, as set forth in the direction of the court, shows that it was contemplated to try the case on the 13th day of January, the time for the City of Dunkirk to answer expiring on the 12th day of January. The decision is somewhat elaborate, containing fourteen findings of fact and four conclusions of law, covering eight typewritten pages, thus affording the presumption that the decision was drawn in the main before the time for the City of Dunkirk to answer had expired.

4. The only relief demanded by the plaintiff in his complaint was that a certain proposed lease of property in the City of Dunkirk intended to be granted to the defendants Stearns and Hooker is without authority of law, unlawful and improper; that the City of Dunkirk be enjoined and restrained from executing to Stearns and Hooker a lease of said property for the easement of light and air, from disposing of, diverting, conveying or otherwise leasing said property for private uses and benefits, or for any use of said property other than the lawful use and benefit thereof for municipal purposes by the City of Dunkirk, with the usual general prayer for such other and further relief as may be proper. The action was brought by the plaintiff as a taxpayer to prevent waste and diversion of City property.

5. The relief asked by the defendants Stearns and Hooker in their answer is in the following words: "Wherefore, these defendants demand that the complaint herein be dismissed as to them and that they may have such other or further relief, or such other and further relief, or both, in the premises as shall be just

and the proof show them entitled." There is absolutely no affirmative judgment asked by these defendants against the City of Dunkirk.

6. There is nothing in the papers to show that the City of Dunkirk was in any manner notified that any person desired any judgment against it for any purpose or relief whatsoever except that demanded by the plaintiff.

7. Upon the trial January 21, 1902, the only witness sworn was the defendant, Lester F. Stearns. Prior to his giving oral evidence the following matters were introduced in evidence by stipulation: (a) The title of the defendants Stearns and Hooker to their lot and deed to the City of the City Hall Park. (b) Resolution of the Common Council of the City of Dunkirk adopted December 3, 1901, this being the resolution directing a lease of the property to the defendants Stearns and Hooker. (c) Petition to the Common Council set out in the complaint. (d) Veto-message of the Mayor set out in the complaint. (e) Resolution of Council adopted December 17, 1901, the form of which does not appear from the minutes of trial, which recite its substance to be that the Mayor should appoint a committee with power to act to sell and convey the present Fire Hall property of the City of Dunkirk, on Central Avenue, and erect a fire hall on the City Hall Park property immediately adjacent to and south of the property of the defendants Stearns and Hooker. This is presumably the resolution referred to in the answer of the defendants Stearns and Hooker which says that at some time "A resolution was duly offered in substance to the effect that a committee be appointed to consider the advisability of disposing of the present Fire Hall premises on Central Avenue and erecting a Fire Hall on the present City Hall Park lot or property extending from Central Avenue to Lynx Street, which resolution was supported by two members of the Common Council."

8. The minutes further disclose that all the defendants have been duly served, that more than twenty days have elapsed since the service, that no one has appeared or answered but the defend-

ants Stearns and Hooker, who are present, that by the consent of the plaintiff and those who have appeared, this action is now brought before this court. This stipulation entered in the minutes seems to show that the City of Dunkirk had no knowledge of the trial and did not consent to the same.

9. The defendant Stearns gave oral evidence that the defendants Stearns and Hooker had constructed a handsome building on the northerly side of the City Hall Park, which building was completed the previous fall. His evidence contains the following: "Previous to the construction of this building I had talks with the members of the Common Council, all of them, I think, with the exception of two, before we let any contract relative to putting this building on this property, and it was represented to me and also to Judge Hooker, on one or two occasions, if we constructed a handsome office building in which to remove the Post Office next to the City property, that the City would not erect any building upon its property or construction of any sort to interfere with the light and air for many years to come. These talks occurred on two or three different occasions between, as I say, all of the members of the Common Council with the exception of two, and myself and Judge Hooker."

10. The foregoing evidence is all there is in the case tending to create any equity against the City of Dunkirk in favor of the defendants Stearns and Hooker that it should not interfere with the light and air for their building.

11. It may be stated as a fact which does not appear in the record of this case that about March, 1901, the City of Dunkirk, by authority of its Common Council, did execute to the defendants Stearns and Hooker a lease authoring them to extend the cornice of their building so as to overhang the City property, and also authorize them to construct areaways on the City Hall property to the basement windows, the overhanging and areaways not extending more than three feet from the line. <sup>o</sup>

12. There is no evidence in the case showing or tending to show that the City of Dunkirk in any way intended to interfere with the light and air of the building of the defendants Stearns and

Hooker, or had threatened to do so, except the resolution introduced in the Common Council relative to the construction of a Fire Hall and supported by two members. The case affirmatively shows by the action of two-thirds of the Common Council that the City was endeavoring to execute a lease to Stearns and Hooker of a strip of land for light and air on the northerly side of the City Hall Park fifteen feet in width running from Central Avenue westerly to the west line of the City Hall Park building and ten feet in width from said line east to Lynx Street. The defendant Stearns was examined by Thomas H. Larkins, attorney for the plaintiff, who asked Mr. Stearns precisely eight questions, each one of which was evidently calculated and designed to assist in bringing out Mr. Stearns' view of the case.

13. The decision directs the following judgment against the City of Dunkirk:

"Second. That the present City Hall property, located at the corner of Central Avenue and Fourth Street, in the City of Dunkirk, New York, shall not be further encroached upon by extensions or additions, or by the building of further structures thereon, but shall be kept intact in its present condition until such time as it shall become necessary for the City of Dunkirk to use the same for the legitimate and necessary purposes of the City Hall property, and that when such time shall arrive in so further utilizing the unoccupied land now constituting the park around and about the present City Hall, the same shall be so built upon and used in such a manner as not to unnecessarily work a manifest or substantial injury to the adjacent building upon the north side thereof, now owned by the defendants Lester F. Stearns and Warren B. Hooker, known as the Stearns Building, in the way of deprivation of light and air, or otherwise, but that in so utilizing any portion of said park or premises about the said City Hall in the manner aforesaid, so far as practicable and possible, such parts or portions of the same shall be so utilized from time to time as will the least interfere with the enjoyment of said premises of the defendants Stearns and Hooker on the north side

thereof, or to work any injury thereto, or in the diminution in the value thereof, and that in no event will the southwest corner thereof, being that portion now bounded upon the east by the City Hall and upon the north by the stone walk running at right angles to Central Avenue, from the Central Avenue entrance to the street be utilized until finally necessary, nor shall any structure or extension be placed along the north side of said City Hall park property at any time within fifteen feet of the north line thereof, until the absolute necessities of the city shall demand and require such use for City Hall purposes; except that that portion of City Hall park on the northerly side thereof, and running west from Lynx street fifty feet and north of the City Hall twenty-five feet, shall be the first property used for additions to the present City Hall building, and within the said dimensions of twenty-five feet in width bounding on Lynx street, by fifty feet in length."

#### CONCLUSIONS.

The foregoing facts taken, with one exception, which is noted, from the judgment roll and minutes of trial, established the following proposition:

1. The action was brought by the plaintiff as a taxpayer to restrain the city of Dunkirk from leasing to the defendants Stearns and Hooker, for the purposes of light and air, a strip of land partly fifteen feet and partly ten feet in width on the northerly side of the City Hall park next the property of the defendants Stearns and Hooker. That the city had no notice of any kind that any other relief was sought or would be obtained in this action against it.

2. That the answer of the defendants Stearns and Hooker failed to demand any relief against the city of Dunkirk of any kind whatsoever.

3. That by arrangement between the attorney for the plaintiff and the defendants Stearns and Hooker, the case was brought to trial very shortly after default had occurred on the part of the city and, so far as appears, without any notice to the city.

4. That the trial was conducted in such manner and upon such proofs as to show that the plaintiff's attorney was assisting to the utmost of his power the defendants Stearns and Hooker in procuring the judgment which was granted.

5. That an affirmative judgment was granted against the city of Dunkirk restraining it in the management of its own property without, so far as it appears, its ever having had the slightest notice of any such proceeding.

6. That the judgment even goes so far as to direct what part of the city property shall be first built upon irrespective of the effect upon the property of the defendants Stearns and Hooker, by building upon other parts of the City Hall park.

7. It further directs that the southwest corner of the City Hall park, the property of Stearns and Hooker being on the northwest corner of the same, as far north as the stone walk running at right angles with Central avenue, shall not be utilized "until finally necessary," thus directing a judgment regarding the City Hall park property as to constructions which it was claimed would affect the property of Stearns and Hooker in any way.

8. That the only ostensible grounds for any claim of the defendants Stearns and Hooker against the city of Dunkirk, were casual conversations with members of the Common Council when not acting in their official capacity, and they only saying: "That the city would not erect any building upon its property, or construction of any sort, to interfere with the light and air for many years to come." Such a judgment can only be based upon the supposed principle that individual members of the Common Council can alienate the city property by verbal declarations when not engaged in the discharge of their official duties.

THE WITNESS: (After examining paper.) Well, the first reason—you want me to read this?

By MR. STANCHFIELD:

Q. I don't want you to read it. Let me explain, Judge, I think you said there were reasons in your consciousness, that actuated you in wanting this judgment vacated? A. Yes.

Q. You gave one technical reason that I have gone over two or three times now. Now I want, Judge, the others that were in your own consciousness? A. The belief, I had then the belief that the judgment was an improper judgment.

Q. Improper in what sense? A. It gave relief, for instance, to which the defendants were not entitled, for one thing, and if you want me to go through this (indicating report, Exhibit No. 104), I will go through and pick out the reasons. That is the only way I can do it.

Q. I am not asking you as to the reason furnished by Green's report. I am asking you for the reasons you stated you had in your own consciousness, that is what you said? A. The reason was because I thought it was an improper judgment.

Q. Now, improper in what way? A. Well, I say I can't point out now specifically the particulars in which I thought it was improper, but I had gotten the impression thoroughly in my mind that it was decidedly so and that is the main reason, as I thought it would compromise, or did compromise, as it stood, not only my own reputation, but endangered my welfare to some extent as it stood unexplained.

Q. Now can you point out now any reasons? A. I can do it no better than I have. Cannot point specifically to the particular things that lead to that conclusion.

Q. Mr. Larkin you had known how long? A. Well, I really don't know. Perhaps ten years, I should say.

Q. Been a practicing lawyer before you for some years? A. A good many.

Q. And was that also true of the lawyers who appeared upon the other side, Mr. Farnham? A. Mr. Farnam and Mr. Stearns I know very well. I presume I know them all.

Q. And Mr. Elton D. Warner? A. Certainly.

Q. Now you have stated here in a general way that you thought this judgment the defendants had relief that they were not entitled to? A. Well, I think that was one feature of it. Yes, that is on the merits. They had gotten it upon the judgment, of course.

Q. Well, didn't you know that the city of Dunkirk was in no way represented upon the litigation? A. I dare say I did, and yet I don't know that I did. I think, by the way, that the mayor of Dunkirk was present. The mayor of Dunkirk at the time appeared in court, is my recollection, whoever it was.

Q. That was the man who had vetoed the resolution? A. Yes, evidently; he was the Mayor.

Q. Mr. Scannell? A. I think he appeared in Court on this trial; that is my recollection.

Q. And he was the official head of the City of Dunkirk? A. If he was the Mayor, he certainly was.

Q. The man who had vetoed this resolution? A. Well, if he was the Mayor, he vetoed the resolution; if you identify him correctly.

Q. Your recollection is that during that trial he sat there listening to it? A. I don't know whether he sat or stood, but my recollection is that he was in Court when the case was being tried. I may be wrong.

Q. The last question, Judge White, that I was asking you before adjournment for the luncheon hour had asked was as to the presence of the Mayor of Dunkirk at the time when the trial took place before in January, 1902, do you recollect whether he was accompanied at that time by the Corporation Counsel or the City Attorney of Dunkirk, I mean wasn't he sitting there with him, but taking no part in the conduct of the trial? A. Tell me who the Corporation Counsel was at that time? Heffernan, was it?

Q. I think his name was Nugent, Judge White. A. I have no present recollection of seeing a Mr. Nugent.

Q. Have you given that subject any consideration since the adjournment, so you are able to speak with any more certainty as to the presence of the Mayor there? A. I have not.

Q. Your recollection is that he was, and that is about all you can say? A. I am impressed with the idea; it may be erroneous; either that the then Mayor or a former Mayor, I feel pretty sure, was present.



Q. Now, did you at the time of that trial have sufficient of the case brought to your attention so as to sense that the defendants were simply asking the enforcement of a resolution that had passed over the veto of the Mayor of Dunkirk? A. Not intelligently.

Q. Not intelligently? A. No, sir.

Q. I take it that you paid no closer attention, Judge White, to this trial than you did, because of the statement that was made by Mr. Stearns or Mr. Larkin, or some one there, that the facts in the case had practically been agreed upon? A. A statement made by some one to that effect, certainly.

Q. Was it owing to such statements made that you paid no closer attention to what the facts were? A. Surely so.

Q. Now you notice while I was reading from the minutes of that trial that a great deal of this testimony was put in by stipulation? A. Yes, sir.

Q. When you came down to a period of time when you desired, of your volition, to have this judgment vacated and set aside, I think you said to Judge Coman this morning that the stipulation to effect that result was dictated by you? A. The stipulation, as signed, I think was prepared by me in the rough.

Q. And the order that was entered in the Clerk's office was likewise prepared by you? A. Dictated, or prepared.

Q. And an order was entered before a Court of which you were the presiding member? A. Yes, sir.

Q. After you commenced to look up this judgment did you ascertain, Judge White, that the Common Council of the City of Dunkirk had passed by a two-third vote a resolution in favor of leasing to the defendants Stearns and Hooker the fifteen feet of ground involved in this litigation? A. I have no present recollection that I could, from which I can say that I specifically observed or noticed that provision at any particular or any time at all. ●

Q. My question is now addressed to the time that you were endeavoring to have the judgment vacated. A. Yes; I can't say.

Q. In the investigation into the merits of the judgment, to see

whether or no it was a proper judgment, did you ascertain that the Municipality of Dunkirk had decided to give Stearns and Hooker this lease? A. I supposed that I had learned all the facts at the time connected with this transaction. I believe now that I had.

Q. That you had that information? A. I presume so. I can't say now specifically how it came to me or what the information was.

Q. Did you likewise obtain information to the effect that the answer of Stearns and Hooker simply called for the validation of that resolution? A. I presume I learned that fact.

Q. You haven't any present recollection, I take it then, what you did determine then when you were having this judgment vacated? A. Oh, yes; I have a recollection of what I determined to have done.

Q. Have you a recollection of the facts that you gathered together upon which to predicate that? A. I can't recall them specifically at this time.

Q. I call your attention to the order and ask you if that is as you recollect the order to have been, that is certified (showing paper to witness)? A. I have no specific recollection about it outside of the record itself.

Q. That is the record? A. Well, if it is, it is undoubtedly correct.

Q. The order to vacate reads as follows: "On reading and filing the stipulation in the above entitled action, dated November 2, 1904, and signed by Warren B. Hooker, Lester F. Stearns, Thomas H. Larkins and Charles J. Wirtner, it is ordered, that the judgment entered herein on January 24, 1902, in the office of the Clerk of the County of Chautauqua be and the same is hereby vacated, set aside and annulled, and it is further ordered that the findings of fact and conclusions of law made by Mr. Justice White upon which said judgment is founded be and the same are hereby canceled and altogether held for naught." That order you say you dictated? A. Yes, sir.

Q. It does not recite that it was made upon an application to you as a Court by anybody? A. It does not.

Q. It does not recite it was made upon application of either the attorney for the plaintiff or the attorney for the defendant? A. It was not, except as contained in the stipulation.

Q. I mean the order does not recite the appearance of anybody before you? A. No one appeared in Court and asked for the granting of that order at the time it was granted.

Q. Now you also dictated, you stated this stipulation? A. Yes, sir.

Q. "It is hereby stipulated by the undersigned, Charles J. Wirtner, the plaintiff above named, who is also the present Mayor of the defendant, the City of Dunkirk; Daniel Scannell, above named, as Mayor of said City; Thomas H. Larkin, attorney for the plaintiff in the above entitled action; Thomas J. Heffernan, present attorney for the defendant, the City of Dunkirk; and the defendants Lester F. Stearns and Warren B. Hooker, above named, that the judgment in the above entitled action entered in the office of the Clerk of Chautauqua on the 24th day of January, 1902, be vacated, set aside and annulled and that his findings of fact and conclusions of law made by Mr. Justice White on which said judgment is founded be canceled and altogether held for naught and that an order to that effect and for that purpose may be applied for, made and entered upon this stipulation without further notice to any of the parties or attorneys in the action and said action is discontinued on the merits without costs."

Now, why were you, a Judge of the Supreme Court, sending to these men insisting that they should sign a stipulation, not only setting aside a judgment you had granted on the theory you may have regarded it as irregular, but also insisting that they should discontinue the action they had brought on their complaint? A. My recollection is that was the plan agreed on with Mr. Wade and Mr. Towne how it should be done.

Q. That is, the judgment not only should be vacated, but the action should be discontinued? A. I don't remember anything specific.

Q. That is your stipulation? A. I am not disputing it.

Q. That said action is discontinued on the merits without costs?

A. Yes.

Q. I think you stated to Mr. Coman we would like to have it upon the record, that after the conversation with Judge Hooker that you have related. Did you have any personal interview with him after that? A. Never on this matter.

Q. I mean with reference to this matter? A. Certainly none.

RE-DIRECT EXAMINATION by MR. COMAN:

Q. Judge White, Mr. Stanchfield asked you whether the fact that the judgment might be harmful to the City of Dunkirk was the inspiring motive which prompted you to have this judgment set aside, and you replied it was one of them? A. Yes.

Q. And as I recollect, you said you could not at this time state what the other motives were? A. Well, I think I did to a certain extent.

Q. Now, you may state what other motives prompted you in seeking to have this judgment vacated and set aside? A. I felt, as I think I stated before luncheon time to-day, that I felt that the judgment as it stood might compromise me as a Justice of the Court. That was another.

Q. For what reason, Judge White, did you feel that it might compromise you, what was there in the judgment,— A. (interrupting.) Why, as I said to Mr. Stanchfield, I can not at this time point out the specific reason, but at the time I investigated the matter and came to the conclusion that I have indicated, that I could not afford to have such a judgment stand in that way. That is about all I can tell you about it at this time.

Q. I call your attention to the memorandum which Mr. Greene furnished you, which you say you read at the time? A. I read at the time he furnished me it.

Q. Was this one of the reasons which prompted you to take that action, that the only papers served upon the City of Dunkirk,

or any officer thereof, so far as appears from the records were the summons and complaint and the temporary injunction and the papers upon which the same were issued; it does not appear that the answer of the defendants Stearns and Hooker was ever served upon the City, or any officer thereof? A. Well, in coming to the conclusion that I did, I took into consideration that fact as I remember it.

Q. And did the fact that an affirmative judgment perpetually enjoining and restraining the City of Dunkirk from building upon its own property, without their having been served with any answer or other pleading giving notice to the City that such judgment was asked, do you remember now that to be a reason why the judgment should be set aside? A. I don't believe I can say any more in respect to the subject than I have already said. I did take into consideration the facts as reported to me by Mr. Greene.

Q. Did you take into consideration the facts which I have just called your attention to? A. I certainly did, if it is contained in that memorandum.

Q. Did you take into consideration the fact that the answer of Hooker and Stearns did not ask for any affirmative relief against the City of Dunkirk? A. I certainly did. I took into consideration all of the facts that I had learned about the case.

Q. Did you take into consideration the fact that there was no appearance by attorney on the part of the City? A. If that appears to have been a fact by the memorandum, I did.

Q. When you commenced your investigation of this subject, did you read the testimony given upon the 21st day of January, 1902? A. By Mr. Stearns?

Q. Yes? A. I have no present recollection specifically of having read that testimony. I either did read it or was informed by my stenographer as to its general import. Whether I read it in extenso, read the whole of the testimony, I can't say.

Q. Do you now remember whether the cross-examination of Mr. Stearns by the plaintiffs' attorney influenced you in any way in arriving at a conclusion? A. It did not, that particular fact.

Q. You did carefully consider all of the facts which are recited in Mr. Greene's memorandum, did you not? A. I carefully considered the facts stated in the report of Mr. Greene and assumed that they were facts.

Q. Did you consider the fact that this judgment was based upon allegation and upon proof of conversations had between these defendants Hooker and Stearns, and the members of the Common Council of the City of Dunkirk when not in session and not engaged in any official business? A. I did not take into consideration that fact as reported by Mr. Greene.

MR. COMAN: That "not" is evidently a mistake.

MR. STANCHFIELD: No.

MR. COMAN: Very well, let it go, then. It is perfectly obvious, though.

Q. I understand you now to say, Judge White, that your recollection is that either Scannell, the then Mayor of Dunkirk, or a former Mayor was present? A. That is my impression about it, my recollection at this time.

Q. Charles J. Wirtner, the plaintiff in this action, was a former Mayor of the City of Dunkirk, was he not? A. Well, I believe so.

Q. That is your understanding? A. That is my understanding.

Q. He is also the present Mayor? A. I have so heard.

Q. Might it not have been Mr. Wirtner instead of Mr. Scannell whom you observed here at this hearing? A. It may have been.

Q. Let me ask you this question to refresh your recollection. Upon reflection, do you now recall that those parties appeared before you on the day before this hearing, on the 20th day of January, 1902, accompanied by Mr. Scannell, and, to go a little further, do you recall whether or not you suggested to them that they go home and see if they could not settle up their differences? A. I have no recollection of that, it may be true.

Q. And whether or not you recall that Mr. Scannell said, "I stand upon my veto, I have nothing to settle"? A. Oh, no; never said anything of that sort to me, nor in my presence.

Q. You didn't hear the testimony given, I understand you to say? A. That is, I said not so as to intelligently understand it, at any rate, at the time it was given.

Q. You didn't read the testimony, or have it read to you, before signing the findings? A. No, sir.

Q. I ask you to refer to the letters which you have here in your possession, and fix the date, as nearly as you can, when you first commenced to investigate the subject of this judgment? A. I don't believe there is anything in the letters that will give me any,—

Q. (interrupting.) Did you write a letter to Mr. Greene and did you receive a response, was that about the first? A. My impression is that I made the arrangement with Mr. Greene in person to investigate, at any rate I have no correspondence with Mr. Greene here,—

Q. (interrupting.) You have no correspondence here that would fix that date in your mind? A. No, I have not.

Q. Now, you have said, Judge White, that your personal recollection was that it was something like a year after you first brought up the subject before the stipulation was signed and presented to you— A. (interrupting.) Just a moment, with Mr. Wade, do you mean?

Q. Yes. A. I think so.

Q. Now, aren't you mistaken as to the length of time, Judge, isn't it a fact that you never spoke about this subject to Mr. Wade until after the Bar Association had begun and the investigation had become a subject of comment in your section of the State? A. When you speak of the investigation made by the Bar Association, do you refer to the questions concerning the Post-office at Dunkirk?

Q. Yes, the Postoffices at Dunkirk and Fredonia. A. May I ask a question?

Q. Certainly. A. Was that the only investigation, or was there an investigation by the United States Government?

Q. There was an investigation—the Bristow investigation by the United States Government, by the Postoffice Department. A.

I think it was after the making of the Bristow report, and when the papers, the newspapers throughout the country were commenting upon that subject that I first began to, at any rate, undo the proceeding, find out what there was in the judgment.

Q. Did you receive a letter from Mr. Greene enclosing this report, which is in evidence, and if so, have you it here? A. What report?

Q. The report on this judgment which you asked Mr. Greene to make for you? A. I did receive that I think,—no, wait a moment, I don't believe I did, at any rate I haven't that letter here from Mr. Greene. I think that report came enclosed to me in an envelope while I was holding Court down in Cattaraugus county, either a year ago this Spring, or two years ago, I don't remember now which, that is my recollection about it.

Q. I understand you to say in response to the counsel's question as to whether you paid no attention to the evidence because of the statements that were made to you by counsel that everything had been agreed upon, that the reason why you paid no attention to it was because of statements made by somebody to that effect. If anybody else besides counsel made such statements to you, who was it? A. Besides counsel in the Wirtner case?

Q. Yes. A. No recollection of anyone. It was upon the statements made to that effect, that is, I took for granted what the counsel stated was true. I don't know that anybody else said anything about it.

Q. Upon the occasion of the hearing, now, you mean that those statements were made to you, there in court? A. Sure, at the time of the hearing, or immediately preceding its commencement.

Q. One thing, Judge White, that I forgot to ask you. Was one of the reasons which prompted you to inquire closely into this judgment the fact that the venue was laid in Chautauqua county and it was being tried in Erie county? A. No, I don't think that had any influence upon my mind at the time. Perfectly competent to try it in Erie county, that is, if the parties agreed to it.



Q. I hold in my hand the official designations of the terms of court for the Eighth District for the year 1902 in the office of the Secretary of State, 1902 and 1903. Will you look at that and see whether or no,—your signature is attached to that, is it not?  
A. Yes.

Q. State whether there was a special term for the trial of issues at which Justice Hooker was presiding at that time (handing paper to witness)? A. A special term for the trial of issues of fact?

Q. Yes. A. 1902?

Q. Yes. A. No, sir.

Q. When was the next special term for the trial of issues of fact, and by whom was it held, or who was designated to hold it?  
A. The special terms for the trial of issues of fact during 1902 were as follows: February 3, White; April 7, Lamberth; June 9, Kruse; September 8, Kenefick; November 10, Hooker.

Q. And that would naturally have come before you on the 3d day of February? A. No, I don't think so, Mr. Coman; naturally it wouldn't have come to Erie county at all; it would have been upon the equity calendar in Chautauqua county.

Q. And when was that term, that Chautauqua term? A. January 20, Kruse; April 28, White; June 16, Hooker; October 13, Childs.

Q. Was the January Chautauqua term actually being held at the time when this judgment was entered before you in Erie county? A. I have no present recollection. From experience I should doubt it. I don't know. Equity terms in Chautauqua county, from what I have observed, are usually very brief.

Q. What was the date of its commencement? A. The twentieth.

Q. This judgment was entered on the twenty-first? A. Yes. It might have been. I wouldn't say it isn't. It frequently happens, Mr. Coman, that in Chautauqua county an equity term will go in in the morning and adjourn in the afternoon. Sometimes there is more work.

By MR. CAHN:

Q. Judge, during the years 1902, 1903, 1904 and 1905 you have held in February the special term for the trial of issues of fact in Erie county, have you not? A. In each of those years?

Q. Yes, that is the official designation. A. Then it is correct.

Q. And you have held those terms? A. That is my recollection. I don't believe I have skipped any.

Q. Now, in the natural course of events, if the venue of this case had been laid in Erie county, or if by stipulation both parties wanted to bring it to Erie county, it would have come before you in February, 1902, on the regular calendar, would it not? A. Why, the venue in the case, being an action affecting real estate in Chautauqua county, of course it had to be laid in Chautauqua county in the first instance.

Q. But if it had come by stipulation to Erie county it would have been tried before you, would it not? A. Not necessarily. If it had come before me by stipulation, as it did, in fact, it would be tried whenever it came.

Q. What I want to make clear and understand, Judge, is that if it was by stipulation agreed that this action should be tried in Erie county, irrespective of where the venue was laid, in the regular course of the special trial term it would have come before you in February, would it not? A. I can't say when it would have come there. It would have whenever the gentlemen interested in it stipulated it there, whenever they appeared. Of course, if it had been put upon the calendar in Erie county it would have been there in February—they stipulated a change of venue and when that change was made taking the ordinary course, if they had noticed it for trial— A. (interrupting) That isn't what they did. They didn't stipulate that.

(Mr. Coman and Mr. Hoyt retired to examine the correspondence referred to.)

SENATOR GRADY: On page 417, which was omitted from the record, you will find a reference to the date of Mr. Wade's connection with the case.

MR. STEVENS: I will read from page 417. I offer the following:

THE WITNESS: I was about to say I find another memorandum here, which is an unsigned copy of a letter from me to Mr. Wade, which indicates to my mind that it was— Which indicates that the initiation of this effort on my part to have this judgment vacated began, so far as Mr. Wade's connection with it was concerned, about the 12th of May, 1904, so that that would perhaps differ considerably from my former testimony.

MR. STEVENS: Page 419, testimony of Daniel Scannell.

(The direct evidence of Daniel Scannell before the Assembly judiciary committee was then read, the questions being read by Mr. Stevens and the answers by Mr. Lawyer, as follows:)

DANIEL SCANNELL, being duly sworn, testified.

Q. Mr. Scannell, where do you reside? A. Dunkirk.

Q. How long have you resided there? A. Forty-five years or more.

Q. In the year 1901 were you mayor of the city? A. Yes, sir.

Q. Also in 1902, a part of that year? A. 1901, 2 and 3.

Q. 1901, 2 and 3 you were mayor? A. Yes, sir.

Q. Do you remember the commencement of an action against the city by Charles D. Wirtner in December, 1901? A. Yes, sir.

Q. The one that has been under discussion here to-day? A. Yes, sir.

Q. You were mayor of the city at that time? A. I was.

Q. You were the gentleman who interposed the veto which has been mentioned here? A. Yes, sir.

Q. Did you ever see the answer that was interposed in that action by Mr. Hooker and Mr. Stearns? A. I don't think I did. I have no recollection of ever seeing it.

Q. Was there any answer interposed in that action by the city? A. I don't think so, not that I recollect.

Q. Now on one occasion did you go to the city of Buffalo with reference to that action? A. Yes, I did.

Q. Do you remember the dates of any of those occurrences? A. I don't, but I am quite sure it was in January, January, 1902.

Q. Do you remember what day in the week you went down there, or day of the month? A. I don't.

Q. Do you remember who went to Buffalo with you at that time? A. Why, I remember Mr. Heffernan was and Mr. Larkins and Mr. Warner were there. They didn't go with me, but they were there.

Q. Were you in court that day? A. Yes, sir.

Q. In reference to that matter? A. Yes, sir.

Q. Were there any proceedings had or trial had while you were there? A. No.

Q. Was there any talk about the case with the Judge holding court? A. Yes, sir.

Q. Do you remember what Judge was holding Court? A. Judge White.

Q. What was the talk that was had in your presence in the Court room? A. Why, I remember Judge White spoke to us we had better get together and settle the matter up, get together and see if we could come to some agreement.

Q. Did you have any conversation in the Court room with anybody about it yourself? A. I did.

Q. What did you say?

Q. What did you say, Mr. Scannell? A. I said that I would agree to nothing, that I vetoed the proposition and that I would stick to it.

Q. That was your statement, was it? A. Yes, sir.

Q. Did you make that in the Court room? A. I did.

Q. In the presence of the Judge? A. Well, I am not positive about it being in the presence of the Judge, but Mr. Warner and Mr. Heffernan was there and I think Mr. Larkins was there at the same time.

Q. Who was Mr. Heffernan? A. I don't know that Mr. Heffernan was an attorney for anybody—

Q. Who is he, I say? A. He is an attorney in our town. He is the present City Attorney of Dunkirk.

Q. Was Mr. Stearns there that day? A. I don't think he was. I don't remember seeing him that day.

Q. Was there anything in the nature of a trial, taking of evidence, while you were there? A. No.

Q. Did you people all go back home that night? A. I did. I don't remember about the others going home.

Q. Do you remember hearing that they were to appear there the next day? A. I think they were to appear there the next day.

Q. That is the way you understand it? A. Yes, sir.

Q. Did you go the next day? A. No, sir.

Q. Were you present in court when the case was tried? A. No, sir.

Q. When did you first learn that a judgment had been entered in the case? A. Why, I guess only a few months ago, two or three months ago.

Q. Up to two or three months ago you never heard any judgment had been entered in the case at all? A. I don't believe I ever heard it, I kind of lost track of the case; just a short time ago I heard that a judgment had been entered.

Q. That is the first you ever knew of it? A. That is my recollection.

The cross-examination and re-direct examination of Mr. Scannell was then read, the questions being read by Mr. Carr and the answers by Mr. Westwood, as follows:

**CROSS-EXAMINATION by MR. STANCHFIELD:**

Q. Well, Mr. Scannell, were you the official head of the City of Dunkirk at the time when this proceeding took place in Buffalo? A. Yes, sir.

Q. Evidently somebody called your attention to the fact that there was going to be a trial of it there? A. Why, I knew of it, I went down out of curiosity, as I remember, more than anything else, not that I was compelled to go.

Q. Did you go out of curiosity, or did you go as Mayor of the City of Dunkirk? A. I don't think I went as the Mayor.

Q. Did your curiosity take you there because you were the Mayor? A. Yes, sir; I went there to see what the outcome of it would be.

Q. You went there to see what the outcome was. Now, there were three or four lawyers there besides you, I say three or four lawyers in your company that made up the party? A. Yes, sir.

Q. Representing different parties to this litigation? A. Yes, sir.

Q. Nothing you say in the way of taking evidence occurred while you were there? A. No.

Q. To whom did you address the remark that you stood by your veto? A. Mr. Warner, and I think Mr. Heffernan.

Q. You were insisting, as Mayor of the City of Dunkirk, that the controversy ought to be fought out? A. Why, after I vetoed the proposition at home, and the council failed to sustain my veto I was done with the matter. Then the matter was taken up by Mr. Wirtner as a citizen.

Q. Did you know Wirtner was going to bring an action? A. I heard that he began it.

Q. You heard such talk? A. Yes, sir.

Q. Now, if you stood by your veto, when you were served with the summons and complaint, did you read it, in any action in which Wirtner was plaintiff? A. I don't think I was served with any summons in the Wirtner matter, I have no recollection of it.

Q. Wasn't the service made upon you? A. I don't think so.

Q. You know Thomas H. Larkins? A. Yes, sir.

Q. Didn't he serve upon you a summons and complaint in the Wirtner case? A. Yell, I wouldn't say positive, possibly he did.

Q. You are a business man, are you not? A. Yes, sir.

Q. What is your occupation? A. Merchant.

Q. Of course you are able to read and write? A. Yes.

Q. You know what a summons and complaint means? A. Yes.

Q. You know what it means to be sued? A. Yes, sir.

Q. Don't you know you were served as Mayor of Dunkirk with this summons and complaint in this action? A. I have no recollection now, Mr. Stanchfield, but possibly I was; I don't know.

Q. Well, the affidavit of service here says you were? A. Then it must be so.

Q. Did you read the complaint over? A. I likely did, if it was served upon me.

Q. Didn't you know that if you wanted to uphold your veto of the resolution that you had to answer that complaint? A. I suppose that is so.

Q. Did you ever instruct the city attorney of Dunkirk, or employ any lawyer to answer it? A. Well, I don't remember, unless Mr. Heffernan was acting for the city.

Q. You have no recollection then, whether you did or you didn't? A. No, sir.

Q. There never was any understanding or agreement that you were not to defend it? A. No.

Q. And at Buffalo, you were voicing your protest against overriding your veto? A. I think likely.

Q. Well, I mean, I judge that from your testimony? A. Yes.

RE-DIRECT EXAMINATION:

Q. Just a question, Mr. Scannell. You understood an action was brought by Mr. Wirtner to prevent the making of the lease, did you not? A. Yes.

Q. Did you learn or understand in any way, that anybody was seeking to get an injunction against the city of Dunkirk to prevent it from building upon its own property? A. No, I don't think so.

By MR. WEMPLE:

Q. Mr. Scannell, do you have a city attorney? A. Yes, sir.

Q. Did you have at that time? A. Yes.

Q. Did you hand those papers that were served upon you over to the city attorney for his action? A. That I don't remember.

By MR. CUNNINGHAM:

Q. The answer was never served upon you, was it? A. No.

ELTON D. WARNER, being called and duly sworn as a witness, testified:

DIRECT EXAMINATION (Questions read by Mr. Stevens. Answers read by Mr. Lawyer):

Q. Mr. Warner, you live in Dunkirk? A. Yes, sir.

Q. And are a lawyer by profession? A. Yes, sir.

Q. Were you formerly a partner of Mr. Lester F. Stearns and Mr. Farnham? A. Yes, sir.

Q. Engaged in the practice of law at Dunkirk? A. Yes, sir.

Q. What was the firm name? A. The firm was Stearns, Warner & Farnham.

Q. During what time did that co-partnership continue? A. I think from about the 1st of February, 1901, until about the 1st of January, 1903.

Q. During a part of that time you were a deputy attorney-general of the State of New York? A. During all of that time.

Q. And what portion of your time did you spend in Albany? A. Why, the major portion of it by far. I was home Saturdays and Sundays, and sometimes an occasional Monday, and during the vacation time, of course.

Q. Do you recall, Mr. Warner the case of Charles J. Wirtner against Daniel Scannell, as Mayor of the city of Dunkirk, and others? A. I knew of such a case, yes, sir. ●

Q. You appeared as the attorney of record in that case? A. I so understand from the judgment roll.

Q. You may state to the committee what your connection with the case was from the first information you had that you were in the case until the conclusion of the case? A. So far as I am able to recollect my connection was substantially this: I remember coming home from Albany in the latter part of a week; I think in December, 1901, and I learned, I believe through Mr. Stearns, possibly through Mr. Farnham, that such an action had been brought and I think was told generally about it. That was in a



very general way. My impression now is that I was to return to Albany the first part of the following week and there was a show cause order of some kind in the case which had been granted by Mr. Justice Kennefick, returnable, I now think, I haven't studied the calendar, but I think on the following Monday. Mr. Stearns told me about the case and asked me to go in the special term on my way down and appear for Mr. Justice Hooker and himself in that matter and oppose the issuing of a temporary injunction upon the return of the show cause order. I did that. I started for Albany and stopped over in Buffalo and my recollection is that I went into special term in the afternoon, at the 2 o'clock session, before Mr. Justice White, and there were present Mr. Larkin, representing the plaintiff. Mayor Scannell was there, I believe, and a lawyer by the name of Nugent from Dunkirk was there with Mr. Scannell in the capacity of an adviser to him. I am not able to state definitely just as to what was said and done in court. I think—my impression is that Mr. Larkin presented the matter in a formal way and I made formal objections to the granting of the temporary injunction, and the Court, as I now remember it, denied the application.

Q. Was there any argument? A. Oh, no; there was no argument. I believe the Court then suggested that the parties go into the side room, into chambers, and see if the matter couldn't be arranged, something of that kind. We went in there, but accomplished nothing, and I came out, as I now remember it, and went to Albany that night without coming back to Dunkirk.

Q. It appears that there was a hearing in the action—before I pass to that, was a formal order entered? A. I don't think so. I never saw any such order.

Q. It appears that the case came on for hearing before Justice White at his chambers in Buffalo on the 21st day of January, 1902. Were you present at that hearing? A. No, sir.

Q. Have you now told the Committee all that you recall with reference to your connection with that case? A. I have, all that I remember, I think I had nothing further to do with the matter

in any capacity after the appearance in special term that I have referred to, and that was purely in the nature of a friendly accommodation for the parties interested.

Q. Did you take part in the preparation of any of the pleadings, or the papers in the case? A. Oh, no; not at all.

Q. Or in the preparation of the findings? A. No, sir.

Q. Or of the judgment? A. No, sir.

Q. Or did you ever see them or inspect them until long after the judgment was entered? A. I don't think I ever did. I may have seen some papers possibly, around the office, but for the purposes of inspection I never saw the papers until I saw the judgment roll something like three or four months ago, after the matter came up. That was the first I ever heard of it.

Q. When Mr. Stearns asked you to appear and oppose the granting of the injunction did he ask you to appear for anybody besides himself? A. Why, himself and Judge Hooker, both of them.

Q. Can you fix the date when you appeared at Buffalo; could you by reference? A. I couldn't independent of the papers. I know now that the date, I think I did see, was December 30th.

Q. 1901? A. Yes; I may be mistaken about that; that is my impression.

BERT E. FARNHAM being called and duly sworn as a witness testified:

DIRECT EXAMINATION:

Q. Mr. Farnham, you lived at Dunkirk? A. Yes.

Q. And a lawyer by profession? A. Yes.

Q. At one time were you a member of the firm of Stearns, Warner & Farnham? A. Yes.

Q. Who composed that firm? A. Lester F. Stearns, Elton D. Warner and myself.

Q. And how long did that co-partnership continue? A. Approximately two years.

Q. And covering what period of time? A. Well, along in February, the time Mr. Warner went to Albany, to the time two years again when we dissolved; 1901 to——

Q. (interrupting): Feb. 1st, 1901, to February 1st, 1903? A. Yes; that is it.

Q. I think he said January 1st, 1903? A. That is when we united.

Q. I said February? A. We began in February and stopped in January, the second year afterward.

Q. What particular branch of the work of the firm was yours especially, Mr. Farnham, during that period? A. Why, pretty much all of it; the detail work especially.

MR. STANCHFIELD: He was the fellow that stayed home and did the work.

THE WITNESS: That is it exactly. Mr. Warner and Mr. Stearns were absent most of the time and I did everything but clean the office and part of the time that.

Q. Do you remember one time of a certain action being commenced in the Supreme Court by Charles J. Wirtner against Daniel Scannell, as Mayor of Dunkirk, and others? A. Yes.

Q. In December, 1901? A. I have forgotten the date of the summons and complaint. In the latter part of that year; yes, sir.

Q. Will you state to the Committee, Mr. Farnham, what your connection with that action was; what your personal knowledge of it was, and what you did, in connection with it down to the time the judgment was entered? A. I think my first notice of the action was reading it in the evening papers, reading in the evening papers that the action had been begun. Of course I had heard of it preceding it somewhat. At that time I had the office of City Attorney. Learning of the commencement of the action I wrote to the Mayor advising him that I had heard that the action had been commenced and asking him if he would please put me in possession of the papers and of instructions as to what I should

do in the matter. I might say in this connection that the City Attorney of Dunkirk waits upon the advice of the counsel of some official before any steps are taken as a rule; that was my practice and I think that has always been the practice. To that letter I received no reply. Later, the next day or so, I again wrote the Mayor calling his attention to the action and to the fact that there seemed to be a difference of opinion between the council and the Mayor and suggested to him that in view of that fact it might be fair to all the people to call a meeting of the council and advise the city attorney as to what he should do, if anything, in the matter. To that I never had any reply and no meeting for that purpose was called afterward. I never had any further connection with the action. I never appeared in the action, as I recollect it, and it proceeded along until the day when the hearing was had in Buffalo. I was going to Buffalo that morning. I went to Buffalo that morning and with Mr. Stearns and at his request I went into the special term and was there when the hearing was had as a friend of Mr. Stearns', and in making any suggestion I might have, or to be there with him, and I was there at that hearing; and I suppose that later, when the findings were made and the judgment entered, very likely the clerical part of it was done by myself. I think in general that is my connection with the matter.

Q. You haven't any recollection, Mr. Farnham, as to the preparation of the findings subsequent to the hearing? A. I think they were prepared that day; that is my recollection.

Q. You think they were prepared and signed that day? A. I think they were. I think Mr. Stearns dictated them to the stenographer and they were signed that day.

Q. After the commencement of this action, and prior to the hearing at Buffalo, state whether Justice Warren B. Hooker was present at the office of Stearns, Warner & Farham at any time? A. My recollection is, sir, that he was.

Q. Could you fix the date? A. I cannot.

Q. Do you know whether the case of Wirtner against Scannell and others was a subject of consultation that day between Mr.

Stearns and Justice Hooker? A. I understood that it was, I think, I wasn't present at the conclusion, but in and out as I was, buzzing around the different rooms at the office, I understood that was the subject of discussion previous to the drafting of the answer.

Q. You took no part in any discussion? A. No, sir, not as I now recall.

Q. State what you observed, if anything, with reference to the papers in this action? A. Why, I understand that the Judge was there to talk it over with Mr. Stearns and prepare a draft out, or plan out the answer and following upon that interview the answer was drawn.

Q. Did you gather that from what you heard and observed with reference to papers there while you were in the office where they were? A. The papers were shortly afterwards drafted, yes, sir; I am not certain whether it was the same day or not.

Q. You have spoken of the findings having been prepared prior to the hearing; are you able to say when they were prepared? A. No, sir; I think they were partly prepared before the hearing and partly prepared the day of the hearing; that is my recollection of it.

Q. At Dunkirk or at Buffalo? A. Well, both; that is my recollection of it.

Q. Mr. Farnham, did you attend this hearing at Buffalo in your capacity as city attorney? A. No, sir. I had no authority to and did not. ●

Q. Were any papers in this action ever served upon you or received by you as city attorney? A. No, sir; nor handed to me by any official of the city, although I attempted to get them.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. I call your attention to the verification of the answer, Mr. Farnham, in the judgment roll (presenting same)? A. Yes, sir.

Q. The answer was never verified by any one except Lester F. Stearns? A. It appears not, sir. I don't remember that fact either way.

Q. When you speak of the preparation of papers subsequent to the time when Judge Hooker was there you refer to the preparation of the answer I take it? A. That is my recollection. That is what I intended to state.

Q. And Judge Hooker was never there but the once? A. I only recall once now.

By MR. CAHN:

Q. Who drew those findings, Mr. Farnham, do you remember? A. I think Mr. Stearns dictated them, didn't you, Mr. Stearns? That is my recollection. I wouldn't swear to that. That is simply my recollection of it.

MR. COMAN: I will read from page 286 of the report of the Bar Association Committee, from the statement of Maurice Hooker, purporting to have been made July 7, 1904, as follows:

"Q. Now, when did you first learn you were appointed in the postoffice here? A. Well, I was appointed at the time I started in school here.

"Q. When did you first learn you had the appointment? A. That was the time.

"Q. Somebody told you you had received the appointment, didn't they? A. Why, I wanted to work a little while I was in school until I got my diploma.

"Q. Who told you you got the appointment? A. My uncle and the postmaster.

"Q. Your uncle told you you had the appointment, did he? A. And the postmaster.

"Q. Yes, and your uncle told you? A. Yes.

"Q. And the postmaster told you? A. Yes, sir.

"Q. Now, where did the postmaster tell you; where was it? A. In my uncle's office.

"Q. Did he tell you you had the appointment, or was going to have it? A. I was going to have it.

"Q. You and the postmaster and your uncle were in his office, and it was arranged there that you were to have the appointment? A. Yes, sir.

"Q. Was it talked how much you were to have? A. No, sir.

"Q. Was that before you started in school? A. No; afterwards.

"Q. After you came here? A. Yes, sir.

"Q. Had you ever known Mr. Taylor before that time? A. No.

"Q. Had you ever seen him before? A. I don't remember ever seeing him.

"Q. That was the first you remember anything about him? A. Yes, sir."

MR. STEVENS: Page 1033.

MR. CARR: Mr. Coman, will there be any objection to our reading as a part of our case this letter of Potter's that is right here?

MR. COMAN: Not at all.

MR. CARR: Then we will read it later, with that understanding. I call attention to it now because it is right here on the record.

MR. STEVENS: I now read a single sentence from the testimony of Maurice Hooker used before the committee of the Bar Association. The sentence is as follows:

MR. COMAN (reading): "Judge Warren B. Hooker, of Fredonia, is my uncle. I had a talk with him sometime before I began going to school at the Normal, and he thought he might be able to get some position for me by which I could earn something while I was attending school, and I was appointed to a position as laborer in the Fredonia postoffice on the application of the postmaster."

MR. COMAN: Mr. President, the counsel for the Legislature rests.

MR. CARR: I suppose we may make the same reservation, that we can read from these affidavits, as they were read here. That reservation was made before.

MR. COMAN: Certainly.

MR. STANCHFIELD: Mr. President, for the convenience of certain witnesses who are here in behalf of the respondent, we would like to be permitted to postpone the making of any openings or motions until after we have examined them.

THE PRESIDENT: The request will be granted unless there is an objection. Have you any objection, Mr. Coman?

MR. COMAN: None at all.

THE PRESIDENT: During the taking of this oral testimony absolute quiet must be preserved in the chamber.

MR. STANCHFIELD: Judge Miller.

THE CLERK: Nathan L. Miller.

NATHAN L. MILLER, called as a witness in behalf of the respondent, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STANCHFIELD:

Q. Judge Miller, where is your place of residence? A. Cortland, N. Y.

Q. And you are now a justice of the Supreme Court? A. I am.

Q. And have been since when? A. Since November 10, 1903.

Q. And where are you at present performing the functions of a judge of the Supreme Court? A. As a member of the Appellate Division of the Second Department, under a temporary designation.

Q. Sitting where? A. At Brooklyn.

Q. Before you became a justice of the Supreme Court were you the Comptroller of the State of New York? A. I was.

Q. From when to when? A. From January 1, 1902, to November 10, 1903.

Q. And from that office you went upon the Supreme Court bench? A. Yes, sir.

Q. Are you acquainted with the respondent in this proceeding, Warren B. Hooker? A. I am.



Q. For how many years have you known him? A. I have known him personally since about 1901, or the fore part of 1902.

Q. And by reputation how long before that? A. In a general way from six to ten years.

Q. Now in a general way, and as a matter of state reputation, not confining it to the locality in which he lives, prior to the promulgation of the charges out of which this proceeding arose, do you know what his reputation, character and standing in the state was, both as a judge and a man? A. I think I did so far as it extended beyond the locality where he resided.

Q. And what will you say, Judge Miller, that reputation was? A. Good.

Q. Now, have you at any time sat upon the Supreme Court bench with him? A. Yes, sir.

Q. Where? A. At Brooklyn.

Q. For how long a period of time, Judge Miller? A. Well, he has been a member of the court—

Q. My inquiry was, how long did you sit with him? A. During the month of January, I think about three weeks.

Q. And that period of time you passed upon the Appellate Division in the city of Brooklyn? A. I don't—

Q. Was that period of time upon the Appellate bench in the city of Brooklyn? A. It was.

Q. During that brief time did you have an opportunity to study his habits and character as a judge, and to form an opinion as to the ability, capacity and integrity displayed by him in the performance of his duties as a judge? A. I did.

Q. What will you say of him in that behalf? A. I would say that his work as a judge which came under my personal observation and from my association with him impressed me in all respects that he was a fearless, conscientious and able judge.

Q. Down until the time of the institution of the charges out of which this proceeding arose, had you ever heard the reputation for integrity, manliness or character of Justice Hooker brought in question? A. I never had.

MR. STANCHFIELD: You may cross-examine.

MR. COMAN: No cross examination.

ADELBERT P. RICH, called as a witness in behalf of the respondent, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Judge Rich, where do you reside? A. At Auburn.

Q. Your occupation is what? A. Justice of the Supreme Court.

Q. You have been a Justice of the Supreme Court of the State of New York for how many years? A. Since the first of January, 1900.

Q. Where are you at present engaged in performing the functions of that office? A. Under a temporary designation to the Appellate Division, Second Department.

Q. Sitting in the city of Brooklyn? A. Yes.

Q. Who is the Presiding Justice of that Department? A. Justice Hirschberg.

Q. How long have you been there? A. Since the nineteenth of December last.

Q. And before last December were you actively filling the duties of a Justice of the Supreme Court in what we might generally term up the State? A. Yes, sir.

Q. And had you at intervals held court before you were designated upon the Appellate Division, both in the cities of New York and Brooklyn? A. Occasionally.

Q. Are you acquainted with Warren B. Hooker? A. Yes, sir.

Q. How long have you known him? A. I think my acquaintance with him began in the winter or spring of 1900.

Q. During the years between 1900 and the time when the charges were promulgated out of which this hearing arose, were you familiar in a general way over the State with the reputation of Warren B. Hooker both as a Judge and as a man? A. I think I was, in a general way.

Q. What will you say that reputation was? A. Good.

Q. Prior to the institution of these charges had you ever heard his reputation, either as a Judge or a man, brought into question? A. No, sir.

Q. Have you at any period of time served with him as a Judge upon the Appellate Division in Brooklyn? A. For two or three weeks only.

Q. And during that brief period of time did you have an opportunity to study his character as a Judge, his habits, his deportment and the ability with which he handled the business that came before him? A. I observed it.

Q. What will you say of him in that respect? A. Well, he impressed me at all times as being a painstaking and conscientious Judge.

MR. STANCHFIELD: You may cross-examine.

MR. COMAN: No cross-examination.

MICHAEL H. HIRSCHBERG, being duly sworn, testifies as follows:

EXAMINED by JUDGE GOODRICH.

Q. Judge Hirschberg, are you a presiding justice of the Appellate Division in the Second Department of the Supreme Court in this State? A. I am.

Q. How long have you occupied that position? A. Since the 1st of January, 1904.

Q. Previously to that time were you also a member of that court? A. I was.

Q. During what period of time? A. Since January 1, 1900.

Q. During that time have you been familiar with the duties of the associate justices of the court? A. I think I can say that I have. I have discharged them.

Q. Do you know and will you give us an idea of the plans by which and out of which decisions are made? In other words, commencing with the time when the case is argued until the time that it is decided? A. Cases are argued; they are assigned to the members in the order of their seniority, excepting that the

presiding justice is assumed to take the first case and the work of each judge upon his case is delivered to and examined by every other judge, each other judge. Cases are discussed in consultation two weeks—two days of each week during the sessions, and the decisions of course are under the Constitution and the code in accordance with the majority.

Q. In other words, the judge to whom an opinion, a case, is assigned, examines and writes the opinion, and that is passed on to each of the other justices, so that each of the other justices is required to investigate. A. That is correct; that is the outline.

Q. When did Judge Hooker come on the Appellate Division? A. My recollection is he commenced service in that fort the 1st of January, 1893.

Q. Did he occupy a position on the bench and in association with you until the present year? A. He did.

Q. Did he sit during the January term of this year? A. He did; he sat during the January term——

Q. (Interrupting.) And since that time—— A. (Continuing.) A. When he was under the rule a member of the sitting court, which was not the entire month.

Q. Since the time that he presented his request for an investigation of certain charges made against him and handed it to the Legislature has he been sitting as a member of the court to hear arguments? A. He has not.

Q. Were there at that time certain cases which had been argued at the January term which were in his keeping? A. There were.

Q. For this examination? A. Yes, sir.

Q. Has he in no way participated in the decisions of the court from January until the present time? A. As a general rule, he has not.

Q. There were some cases? A. There were some cases he had written in or voted in which have been decided with his vote of concurrence or dissent as the occasion may have been.

Q. Judge Hirschberg, after the opinion of the writing judge has received the concurrence or dissent of the different members of the court, is it the habit to have these opinions presented and docketed for publication? A. It is.

Q. Many cases, as I understand it, many cases are discussed around the consultation room? A. They are.

Q. Wherever there happens to be a difference of opinion between the judges there upon a case or upon the details of it, these cases form the subject of consultation? A. They do.

Q. And they are discussed out of the consultation room? A. They are.

Q. In these discussions is it the habit of each member of the court there to participate as he sees the necessity for it? A. Naturally.

Q. Did Judge Hooker take part in the discussions, consultations and deliberations during the term in which he acted as a justice of that court? A. He did.

Q. And in your presence? A. I think almost always.

Q. Were there occasions when he differed with the rest of you? A. There were.

Q. And there were occasions where he agreed with you all? A. There were.

Q. In other words Judge Hirschberg, does the experience which you had with Judge Hooker during his term of office of membership in the appellate division, enable you to form a judgment as to his character, capacity, force and integrity as a member of that court? A. I hope so, I believe so.

Q. While you have been presiding justice has there been added to your observation of him something more than your former observation growing out of the fact you are presiding justice? A. I don't think so.

Q. Aren't you brought more in contact with him than you were before? A. I don't think so, about the same, it is a nominal difference, in our court it is purely a nominal difference, the presiding justice does his share of all the work.

Q. Now will you give us the opinion which you have been enabled by this association to form of Judge Hooker in the respect as to which I addressed the question a moment ago? A. Yes. I can only speak of his judicial work since I have known him in terms of commendation. It has been generally characterized by industry, clearness, fairness, independence of opinion, without any undue spirit of self opinion, impartiality and apparent conscientiousness, and I might add adequate legal capacity.

No cross-examination.

WILLARD BARTLETT, called as a witness, in behalf of the respondent, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. GOODRICH:

Q. Judge Bartlett, how long have you been a Justice of the Supreme Court? A. I was elected in November, 1883.

Q. How long have you served as a member of the Appellate Division in the Second Department? A. Ever since it was constituted, January 1, 1896.

Q. Of course you are familiar with the general routine of business in that Department? A. I should be sorry to think I was not.

Q. When did Judge Hooker become a member of the Appellate Division? A. My recollection is, he came the first of January, 1903.

Q. And since that time have you had opportunity—had occasion to discuss legal propositions with him when they were presented by the cases submitted? A. Very often indeed.

Q. Does a part of the work of an Appellate Division Judge consist in the discussion of these propositions with the other members of the Court? A. It does.

Q. To what extent, Judge Bartlett? A. Whenever they are in consultation—the regular consultation is twice a week, and a great deal of the time when they are together in their rooms when not in formal consultation.

Q. The Judges of the Appellate Division, by the way, during a portion of the time when Judge Hooker has been sitting, were in the City Hall, as it is called now? A. Borough Hall.

Q. Are the rooms of the several Judges adjacent to each other?

A. Yes, sir.

Q. Something in the nature of what you might call stalls? A. You might put it that way.

Q. So that communications are exchanged between the Judges with great ease and familiarity? A. Yes.

Q. And some times you passed from one room to another room in order to consult individual Judges? A. Oh, yes.

Q. And then met in consultation in the general consultation or library room.

During the time you had been associated with Judge Hooker have you been enabled to form a judgment of his judicial work?

A. Yes.

Q. Will you give us the benefit of this opinion thus formed?

A. All his judicial action, so far as it has fallen under my personal observation, has been capably and credibly performed.

Q. May I ask whether in his contact with you in opinions and discussions he has impressed you as a faithful, conscientious, able Judge? A. I cannot convey my idea any more distinctly than I have. The impression he has formed upon me has been just what I have stated. All his judicial actions have been, so far as they have fallen under my personal observation, characterized by ability, capacity and fairness.

MR. COMAN: No cross-examination.

A. F. JENKS, being called as a witness in behalf of respondent and being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. GOODRICH:

Q. Justice Jenks, how long have you been a Justice of the Supreme Court? A. Since the 1st of January, 1899.

Q. How long have you been a member of the Appellate Division, the Second Department? A. My first term of five years expired April 16th last. I am now on the second term by re-designation.

Q. During a portion of that time did Judge Hooker sit in association with you? A. He did.

Q. Commencing—— A. I think the 1st of January, 1903.

Q. Have you had occasion during that time to meet frequently with him in consultation and discussion in cases submitted to the Appellate Division? A. I have.

Q. The habit is for consultation or discussion for consideration by each Justice of every case submitted, isn't it? A. You are right.

Q. Does that involve more or less of discussion with the writing judge? A. Always.

Q. Have you had occasion to discuss with Judge Hooker opinions which he has written? A. I have.

Q. Even in cases where you did not agree with his conclusion? A. I cannot think of any such case, but doubtless that is so.

Q. Also did he discuss with you cases you had written? A. Undoubtedly.

Q. Did this all enable you to form a judgment as to the judicial conduct of Judge Hooker? A. Yes.

Q. Will you give the joint assembly the benefit of your opinion of the judicial conduct of Judge Hooker during the time you have been with him in the Appellate Division? A. Speaking from my personal association, that you have outlined and indicated, I have found Judge Hooker to be a capable, able judge. I think he is a man of independent mind, anxious to arrive at the right decision; earnest in his mental effort, and so far as I have seen, entirely honest in his conclusions.

MR. GOODRICH: Will you retain your place for a moment, Judge Jenks?

By MR. STANCHFIELD:

Q. In all your official relations with Mr. Justice Hooker, in his opinions, in the discussions that you have had with him, judicial in their character, have you ever observed any indications of a lack of moral fitness for his position, or any indications of moral tergitude or moral delinquency? A. No.



MR. STANCHFIELD: That is all.

WILLIAM J. GAYNOR, called as a witness for the respondent, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. GOODRICH:

Q. How long have you been a justice of the Supreme Court?

A. for 11 years past.

Q. During that time have you been sitting a good deal in the City of Brooklyn upon the Trial and Special Terms and Chambers? A. Yes, sir.

Q. During that time did Judge Hooker hold some of the Special or Trial Terms in Brooklyn? A. Judge Hooker began five years ago I think, holding terms of court in Brooklyn, and was assigned there quite frequently, and then went into the Appellate Division two years ago or three years ago.

Q. During the time that both of you were holding trial terms in the City of Brooklyn, did you come into contact with him in a judicial, official way? A. Yes, sir.

Q. Did you have opportunity to form an idea of his judicial acts and actions? A. Yes, sir.

Q. Did you sometimes discuss judicial questions or legal questions with him? A. I don't think so.

Q. Had you occasion to observe his methods in courts? A. Yes, sir.

Q. What is your opinion of the judicial actions and fitness for the position of a justice of the Supreme Court of Warren B. Hooker? A. Well, we all there thought during his term of service with us——

Q. Will you kindly speak a little louder. A. During his term of service with us all of us thought that he was a fine judge and a fine man; that is as much as I can say.

Q. When you say "fine judge" do you mean to embrace in that all that constitute a first class judge? A. Yes, I mean a fine judge in every way; just, impartial and learned in the law, which he has displayed since he has been on the Appellate Division bench.

MR. GOODRICH: That is all.

MR. COMAN: No questions.

MR. STANCHFIELD: Mr. President, I would like to ask, if there is no objection from any quarter to have this hearing go over until to-morrow morning. We will finish to-morrow in any event—I mean with the opening and with the evidence. But witnesses have been coming in by railroad train at all hours of the day and we don't know what witnesses are here yet or the order in which we want them, and I am very certain in making this suggestion—I am making it to a lawyer of experience—we would get along faster than by going on to six o'clock.

THE PRESIDENT: Have you any evidence in the record here that could be offered at this time.

MR. CARR: Nothing but the reading of a short letter.

MR. STANCHFIELD: Just one letter that wouldn't take three minutes in the reading. It was impossible to ascertain with absolute certainty just when the gentleman on the other side would finish. We have not got into touch with them.

MR. RAINES: Mr. President, did I understand the counsel to intimate that he thought he could close his side of the case and open to-morrow, provided there is no time taken by the other side?

THE PRESIDENT: The chair so understood, Mr. Stanchfield.

MR. STANCHFIELD: That we would open and close the testimony. I didn't refer to a summing up.

THE PRESIDENT: I did not so understand it—closing the testimony.

MR. STANCHFIELD: Yes, sir.

MR. RAINES: Well, Mr. President, it becomes entirely evident that it would be impossible to finish this proceeding this week; it would necessarily have to go over into next week. In order, then, that the sense of this joint convention may be taken, with the concurrence of gentlemen of the Assembly with whom I have talked and others I will move that when the joint Assembly

adjourns to-morrow night, or to-morrow, it be to meet on Monday evening at eight-thirty o'clock.

**THE PRESIDENT:** The Senator from the Forty-second moves that when the joint Assembly adjourns to-morrow it adjourn to meet on Monday evening at 8:30 o'clock. All those in favor say aye.

(Cries of aye.) Those opposed, no. (Cries of no.) (Cries of roll call.) All those in favor will rise and remain standing until counted. All persons in the chamber not a member of either House will remain seated.

The clerk announced sixty-one.

**THE PRESIDENT:** All those opposed will rise and remain standing until counted. It is evident that the motion prevails. If any one insists upon a count, a count will be had.

**MR. TOMPKINS:** I insist upon a count.

**THE PRESIDENT:** All those opposed will rise and remain standing until counted.

The motion prevails. When the joint Assembly adjourns to-morrow it will be until Monday evening at 8:30 o'clock.

Unless there is objection the chair will grant the request of the attorney for the respondent. Is there objection? If not the joint Assembly stands adjourned until ten o'clock to-morrow morning.

At 4.30 p. m. the President and Senate returned to the Senate Chamber.

Mr. Malby, from the committee on finance, to which was referred the nomination of Henry H. Persons, of East Aurora; Milo M. Acker, of Hornellsville; John A. Sleicher, of New York city; Charles Davis, of Kingston, and Ernst J. Lederle, M. D., of New York city, as State Water Supply Commissioners; also the designation of Henry H. Persons, of East Aurora, as president of said State Water Supply Commission, reported the same to the Senate for confirmation.

Mr. Malby, from the committee on finance, to which was referred the nomination of Oliver Nichols, of South Onondaga, who

was appointed agent of the Onondaga Indians, during the recess of the Senate, as agent of the Onondaga Indians residing on the Onondaga Reservation, reported the same to the Senate for confirmation.

The Senate went into open executive session, and after some time spent therein legislative business was resumed, and the President announced that said nominations had been confirmed.

The Assembly sent for concurrence a resolution in the words following:

Resolved (if the Senate concur), That when the Legislature adjourns to-morrow it be to meet on Monday, July 17, at 8.30 o'clock p. m.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Ordered, That the Clerk return said resolution to the Assembly, with a message that the Senate have concurred in the same.

Mr. Raines moved that the Senate adjourn until to-morrow at 9.50 o'clock a. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon, the Senate adjourned.

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FRIDAY, JULY 14, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. Henry Graham.

The journal of yesterday was read and approved.

A communication was received from the Governor, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER.

ALBANY, *July 13, 1905.*

*To the Senate:*•

I hereby nominate, as manager of the Utica State Hospital, John D. Kernan, of the city of Utica, to succeed David H. Burrell, who declined the appointment.

Mr. Coggeshall moved that said nomination be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Also, the following:

STATE OF NEW YORK—EXECUTIVE CHAMBER.

ALBANY, *July 13, 1905.*

*To the Senate:*

I hereby nominate, as managers of the Craig Colony for Epileptics, Abbott Low Dow, of Kings county, from the Second Judicial District, and Jeannette R. Hawkins, of Malone, Franklin county, from the Fourth Judicial District, to fill the vacancies caused by their own failure to qualify.

FRANK W. HIGGINS.

Mr. Stevens moved that said nominations be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The hour of 10 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber to meet in joint session.

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JOINT SESSION, ASSEMBLY CHAMBER.

THE PRESIDENT: If there are no corrections the journal will stand approved.

We are ready to proceed, Mr. Stanchfield.

MR. STANCHFIELD: Mr. President and gentlemen of the joint session, the respondent asks that these proceedings be dismissed upon the ground that the evidence fails to establish any of the accusations contained in the statement of cause for removal. I do not care to argue any further.

THE PRESIDENT: Motion denied.

MR. STANCHFIELD: Mr. President and gentlemen of the joint session, it has seemed wise upon the part of counsel for

Mr. Justice Hooker that there should be an exposition upon our part of the position he takes with reference to this proceeding. The onerous burden——

THE PRESIDENT: Mr. Stanchfield, if you will pardon the interruption, it has been suggested that you would be heard to better advantage by the members of the joint assembly if you would stand in the position where one of the leaders stand. It is difficult to be heard from the well.

MR. STANCHFIELD:

Mr. President and gentlemen of the joint session, whatever may be the outcome of this discussion, this is certainly a more familiar place for me to stand and speak from than it is at that end of the chamber.

The burdensome task has been assigned to me to put before you the position, both in law and fact, that is taken by Mr. Justice Hooker with reference to this proceeding.

The case is unique in two ways: In the first place, there is no—absolutely no—precedent for it in the history of this State. In the second place, I do not recall within a generation a solitary instance where a man at whose door was laid an acquisition of this kind has been subjected in the columns of the newspapers to so much criticism and abuse. It is of paramount importance, upon the threshold of our discussion, that we should have a clear understanding as to what you are, and an equally lucid notion as to our status here.

In the extremely able report made by the distinguished Senator from Saratoga, as chairman of the judiciary committee of the Senate, I notice he makes use of this somewhat, to us, startling phraseology:

“In an impeachment proceeding the judges of the Court of Appeals, presumably the most learned and conservative men of the legal profession within the State, form a portion of the court. The members of the court, including Senators, take a special oath

as judges in the court of impeachment. The judgment may extend to disqualification to hold any office in the State." And he says, in italics, "It is a court of impeachment and all its members are for a time judges of that court."

He proceeds: "No such solemnity surrounds removal by resolution, which everyone here understands is the proceeding at bar. There is no additional oath, no court, no judgment of disqualification. It is a proceeding of the Legislature as such, while impeachment is a proceeding in the most august and solemn court known to the State."

We are confronted at the outset, then, with the assertion emanating from the chairman and presumably voicing the sentiments of the judiciary committee of the Senate that this is not a court, but that we are engaged in some sort of an informal proceeding, legislative in its character, in which there is no court; and it would follow as a logical consequence that we are here more as a matter of your grace and of your favor than as matter of right.

The same sentiment in different phraseology has been spread upon the records of the Assembly Chamber, voicing the sentiment of the Assembly judiciary committee. There may have been a time when that was true—that this was perhaps a sort of a legislative proceeding destitute of the solemnity that goes into and forms one of the constituent elements of a court, but that time passed away after the abandonment of the Constitution of 1821.

There are three ways—I will come to them more in detail later—by which the State may rid itself of the presence of an obnoxious judge. There is removal by a two-thirds vote of all the members elected to each House. There is the method of impeachment in which the Assembly acts as grand jury and the Senate and Court of Appeals act as the court and the trial jury. Then, under another section of the Constitution which confers upon the Legislature the right to declare those cases in which vacancies shall occur, you have passed what is known as the Public Officers Act and you have specified nine different instances upon the happening of any one of which an office becomes vacant.

For illustration, the presentment by a grand jury and the conviction by a trial jury of a justice of the Supreme Court *ipso facto* works a vacation of the judicial office. So that we have in this State those three methods by which vacancies can be procured among the judiciary.

The proceeding to remove a judge never had any part or parcel in the American form of government. It never ought to have been incorporated into the Constitution of any State. I recognize that is a broad assertion and I purpose to demonstrate why. While the remedy by impeachment existed in England from 1376 down until this time, the power of a removal, which, of course, is a widely different procedure, never came into force until some time in the seventeenth century. It is an English proceeding, which originated in England because of the fact that judges were appointed for life and were not elected by popular vote to place. It originated as a principle in a combat that took place between the Crown and the House of Parliament, and because the Crown of England asserted the right to shuffle off the bench a judge the moment he manifested independence and ceased to be subservient to the slightest whim or caprice of an English monarch. It was incorporated into what was known back in the seventeenth century as an act of settlement; that meant a bargain between the English king upon the one hand and the House of Parliament and the English people upon the other. And in this act of settlement to protect the people, this provision was incorporated into the English law. ●

One has read, who reads at all in the newspaper discussions that have gone on for months with reference to the legal position in this case, many learned discussions about what the British Constitution provides. I never knew until I saw it in the columns of the newspaper press that there was an English Constitution. I would like to have some of these editors who speak so learnedly about what your duties are and what this proceeding is, find and produce somewhere here a copy of the British Constitution. The reason why it is necessary to incor-



porate into English law this power of removal was because of the fact that Parliament is the English people. Parliament is the English government. It is supreme. There is no veto that vests in some other or different branch of the English government, and when they put the power of removal into the act of settlement it was because of the fact that Parliament represented and spoke for the people.

Now, I have commented upon the history of this removal clause in the English law for the reason that I wanted to make clear to you the formal assertion it had no place in our jurisprudence, and I am corroborated in that statement by the fact that when our forefathers, whose names are familiar in the history of the century gone by, gathered together in the old City Hall in Philadelphia to frame the Federal Constitution under which the American people have grown up, and a document so great that Mr. Gladstone once said of it it was the grandest work ever stricken off in a given time by the brain or purpose of man. In that document our ancestors deliberately, for it was a topic of debate, left out of the Federal Constitution any allusion to the power of removal of judges, and the Federal Constitution remains in that form to-day. There is no provision in the Constitution of the United States providing for the removal of judges similar to the section under which this proceeding is brought. There is, of course, in the Constitution of the United States, a provision conferring the power to proceed by impeachment. So much for our Federal Constitution. Before that was approved, in some of the original thirteen Colonies, in differing phrase, this provision was incorporated. In some of the States it requires two-thirds, some a majority, and some three-fourths of both houses to remove. It was not until 1821 that a provision of a character akin to the one I am describing became a part of the organic law of this State. Now, in 1821, in New York State, judges were appointed to hold office for life. They did not become elective until after the Constitution was adopted of 1846. And the underlying reason of the incorporation of this removal provision into

the Constitution of 1821 was because of the fact that judges were appointed and held for life, rather than elected.

I made the remark that in 1821, under the provision in the form that it then stood, there might have been force and logic behind Senator Brackett's report that this was not a court, and I read that section from the Constitution of 1821:

"All officers holding their offices during good behavior may be removed by joint resolution of the two Houses of the Legislature if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concur therein."

Now, you will notice in that section that there is no provision made for the service of a copy of the charges upon the man accused of dereliction. There is no right conferred giving him an opportunity to be heard. There is simply the bald, naked constitutional authority for two-thirds of the Assembly and a majority of the Senate to remove.

It happened in the course of the political history of New York that in 1840 or 1841—I do not desire to be held to too close an accuracy of statement with reference to dates—that a man by the name of Morris, who was then the recorder of the city of New York, filling the functions of that judicial office, awoke one morning to read in the newspapers that he had been removed. And it seems that the night before a delegation from New York came to Albany, and without service of charges and an opportunity to be heard, they went before the Legislature and Morris was removed.

The vice inherent in that unilateral, unfair proceeding aroused such a sentiment in the hearts of the American people that the same fall the same man was elected mayor of the city of New York to vindicate him.

That situation led to the adoption in the Constitution of 1846 of a provision that reads—and I only read an excerpt from the section—like this: "but no removal shall be made unless the cause thereof be entered on the journal or unless the party complained of shall have been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense." In other words, the summary action that was

taken in the instance of Morris resulted in spreading on our law the provision requiring the party accused to be served with a copy of charges and giving him the right to be heard. That language went into the Constitution of 1894, and although the word "complaint" was changed to "charges" and "charges" was changed to "cause," there exists to-day the right to have a copy of the statement of causes served upon the man accused of a lack of duty or dereliction, and he is given an opportunity to be heard.

Now, the question arises, What right is conferred upon Justice Hooker? What right is given him by the language "an opportunity to be heard?"

When a discussion arises in a tribunal of this dignity, representing as it does men learned in every profession and trade and walk in life, and there is a controversy or a dispute as to the significance or meaning of some particular word or expression, we turn, as a sort of second nature, to the Court of Appeals to find whether there has ever been a judicial construction of what certain language means.

Now, mark you, in Senator Brackett's able opinion, seconded by that of Mr. Fish of the Assembly, they take the position this is not a court. And I have listened during the months that have gone by to debates in the Senate Chamber in which Mr. Fish has taken the position—I have heard it voiced by Mr. Coman, the counsel for the Legislature—that Justice Hooker has no rights here. He hasn't the right to call a witness; he hasn't a right to be represented by counsel here, and that in every step that has been taken—and they have iterated and reiterated it over and over again, that you are here, if you please, by grace; you are here because we permit you to be here; you are here as a matter of favor. And before we get in the merits of this discussion I want it understood we deny that proposition and that assertion, and we assert that we are here not in the capacity of suppliants, we are here because the Constitution of the State says we have the right to be heard, and when it uses the phraseology, "he shall have an opportunity to be heard," it means he shall

have the right to be heard through the mouth of counsel; it means he has the right to present witnesses in his behalf; it means he has the right to cross-examine them, and this is a trial, and this is a court of justice.

There is no assertion that I purpose to make in the hearing of this Legislature for which I will not produce the authoritative statement of the courts of the land, either in this State or in the Federal tribunals. It appears that in 1880 the Court of Appeals of this State were called upon, in the People on the relation of the Mayor vs. Nichols, reported in the 79th N. Y., at page 582, to construe what the language: "An opportunity to be heard" meant. And I read here as establishing the proposition for which we contend that we are here by absolute, cold, strict right. This language is from the opinion of Mr. Justice Danforth:

"The records shows that in May, 1876, the defendant Nichols was appointed Commissioner of Police. He accepted the appointment and entered upon the duties of the office. Its term was six years, and the annual salary \$6,000. It was thus," says Judge Danforth, "an office of honor and profit, to the enjoyment of which he was entitled for the full term unless removed for misbehavior or unfitness to discharge its duties. The relator was the mayor of the city, and the charter conferred upon him the power to remove the defendant." Now comes the language, "but only for cause and after an opportunity to be heard."

Now I call your attention to this language of the Court of Appeals: "The power is not an arbitrary one to be exercised at pleasure, but only upon just and reasonable grounds, and then not until after notice to the person charged, for in no other way could he have an opportunity to be heard. The proceeding, therefore, must be instituted upon specific charges, sufficient in their nature to warrant removal, and then unless admitted proven to be true. The defendant might also cross examine the witnesses produced to support the charges and call others in his defense, and in these and other steps in the proceeding be represented by counsel. In no other way could the person sought to be removed

have a due hearing or an opportunity to be heard, and this condition must be complied with before the power of removal is exercised."

Now that proceeding took place with reference to a man filling an office, the term of which was for six years, at an annual salary of \$6,000 a year, and the language that the court was called upon to construe was similar language to that used in this constitutional provision. I have read that language for the purpose of giving you a legal construction of what an opportunity to be heard means, and I trust in the light of it you will not believe or feel that the language that I have used with reference to our presence here has been stronger than the law would justify. It follows as a necessary corrolary that the incubus rests upon me of demonstrating in the logical and harmonious rounding up of my argument that this is a court. That it is not a legislative body but that it is a legal tribunal with all the constituent elements of a court present; and to that proposition I invite for a moment your serious consideration. I shall call your attention in a few moments to the case of the People on the relation Bond against the Trustees of Saratoga—Saratoga always cuts a good deal of ice in proceedings of this kind—reported in the 42nd Appellate Division at page 329.

Now I purpose to read the opinion in that case for two reasons. You will recall in the earlier stages of this proceeding that counsel for the respondent challenged the right of the Assembly judiciary committee to sit as the judges in this case and we did that advisable, did it deliberately, and I purpose with this opinion to demonstrate not only that this is a court, but that the Assembly judiciary committee of this body have no right in law, in ethics, in propriety, to sit in judgment upon this case—

THE PRESIDENT: I do not think it is necessary to take up any time upon that question as the President of the body has already passed upon the challenge.

MR. STANCHFIELD: I wage no war with that decision, but I submit that we have the right to proceed with this argument

upon this theory, because from this case we may be able to convince Mr. Fish and the members of the Assembly judiciary committee that under the law of this State and of every civilized country upon the globe they ought not to sit as judges of this case; and I insist upon my right to make this argument and to read this case upon the ground that I may be able to convince the members of that committee that they ought not to act in the capacity of judges. And when I take an exception to your ruling it is upon the broad proposition that I may reach them and make them feel that having heard this evidence and having made findings of fact and advised this Assembly, that as men they have no right to sit in the capacity of judges. That is the theory upon which I assert my right to make this argument.

In the case of the People upon the relation of Bond against the Board of Trustees of the Village of Saratoga, the facts were substantially these: Mr. Bond was a Highway Commissioner of the Village of Saratoga. The law provided that the Board of Trustees should have the power to remove any officer they appointed upon charges preferred and proven against him after notice of the hearing. The Board of Trustees in 1895 consisted of thirteen members, and a quorum, which meant seven, had power to act. One of the trustees of Saratoga Springs, Thurber, made written charges against Bond as a basis for his removal. When the Board of Trustees gathered together to hear these charges upon the question of the removal of Bond there was but seven members of the Board of Trustees present, and one of the seven trustees was Thurber, who made the charges against Bond. Upon the question of the removal of Bond, Charles B. Thurber, as trustee, cast the seventh vote which made possible the removal of Bond. Bond appealed to the courts of this State to reverse that upon the ground that he had no right to vote, having preferred the charges. I realize here, and I want this Legislature in joint session to have a perfectly clear understanding of it, that the Constitution says that a man in the position of Mr. Justice Hooker can only be removed by a vote of two-thirds of the members duly elected to each House; and the answer that the President wanted to make when he overruled me was that

they had a constitutional right to vote here. Notice if it was necessary—I want you to follow my argument—if it was necessary in order to found a tribunal that could remove Judge Hooker and it required the Assembly Judiciary Committee in order to constitute such tribunal that had the positive power to remove, I would not be here with this question.

But I defy any of the counsel who represent the opposition in this proceeding to show me a case reported in any civilized nation which holds that where there is a tribunal that can act, an accuser or a disqualified judge is permitted to sit. In other words there would remain after the Assembly Judiciary Committee had been excluded enough members elected to the House of Assembly to render a two-thirds vote in favor of the removal of Justice Hooker. So that the tribunal would not be destroyed; the Court would exist; and it is for that reason that I wish to impress upon you the language of the Appellate Division in this case.

Now, the accusers here, the men who ask you to take this proceeding, make up the Assembly Judiciary Committee. They have presented a formal report and this is their language:

“We are of the opinion that the acts of said Warren B. Hooker hereinbefore set forth in the several findings of fact, constitute and are cause for his removal under Section 2, of Article 6 of the Constitution of this State.

**RECOMMENDATION.** We recommend that proceedings be taken by the Legislature for the removal of said Warren B. Hooker from the office of Justice of the Supreme Court.”

And they find further: “We are of the opinion that the acts of said Warren B. Hooker do not constitute cause for impeachment, but they are cause for removal.”

Now, all of the Assembly Judiciary Committee, and there are several of them before me, for days listened to the testimony of sworn witnesses in this case. You rendered that opinion; you made those findings of fact upon sworn evidence, and it disqualified you in every legal tribunal, in every legal proceeding from

the right to sit as a jury or court. Now you men are here and I will demonstrate that this is a court later under precisely similar circumstances that the Constitution of the State confers upon a jury who are determining a case of libel. The Constitution says, that in an action of libel the jury shall be the judges both of law and fact, and I would like to inquire what you men are doing here except to pass upon the law and facts. Now when these members of the Assembly Judiciary Committee listened to this testimony and made findings of fact and conclusions of law they not only took the attitude with that recommendation of accusers, but became disqualified as well. The Constitution of the State provides that a judge who has once decided a cause is absolutely prohibited in sitting upon any superior tribunal in review of it. The law of the State says when a man sits upon a grand jury he is absolutely disqualified from sitting upon a trial jury. The law of the State prescribes that a man who has acted at a coroner's inquest and heard the sworn testimony is disqualified from acting on a jury. It goes further and says a man upon a jury where the case, for some technical reason, does not reach the jury, is disqualified from sitting upon a subsequent one, and I would like to know, when the Legislature has resorted to so much care to protect a man charged with crime against the intrusion into the jury box of a man with a preconceived opinion upon what theory men who have listened to evidence and voted and recommended a line of action, can justify their conscience in saying they will act upon this question of removal in the capacity of judges.

It was somewhat conspicuous that one of the members from Chautauqua, Mr. Wade, simply because of the fact that he had some time ago acted in the capacity of counsel for Judge Hooker took the attitude here that that relation to Judge Hooker disqualified him from acting in this case and he was excused by you by reason of that fact.

Now in this opinion in the Appellate Division this is the language: "One of the rights secured to an accused person by the law of the land is that his accuser shall not be at the same time



his judge. That is a principle of law that is fundamental. It is the first requisite to a fair and impartial trial. It is a privilege that the law of the land guarantees to every man when his life or his liberty, his good name, fame or property is involved. It is a maxim in every code in every country that no man should be a judge in his own cause. The learned wisdom and enlightened opinion and unlettered knowledge in ruder society are in full concurrence on this point. Whenever tribunals of justice have existed all men have agreed that a judge shall never have power to decide where he is himself a party. In the case at bar the relator was removed from office by the vote of the man who preferred the charges against him. The presence of this man enabled them to act. If he had withdrawn there would not have been a sufficient number present to give jurisdiction to act. He, in fact, condemned the relator. The accuser and the prosecutor determined the truth of the charge that he made. He decided his own case.

So much for the right or propriety of this committee who assert the right to sit.

I make another assertion, it is this, that you are here in the capacity of a court, clothed with the powers and duties of a court, and I call your attention to another portion of this decision for the purpose of convincing you that in this proceeding you are a court, sitting as such.

Blackstone defines a court—I assume that every member of the legal profession who sits here is familiar with what he says upon the subject. Blackstone defines a court “as consisting of at least three constituent parts, namely: ‘The actor or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it, and the judex, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and, if any injury appears to have been done, to ascertain and by its officers to apply the remedy.’”

Now, that language is used in answer to a contention of counsel that the board of trustees of the village of Saratoga did not

constitute a court. That was an argument made in the appellate courts of this State as to why that removal ought to stand, that the board of trustees were not a court. The answer is here that they were, and they go on saying in the proceedings now under review we have the three constituent parts of a court: the actor, Thurber, who complains of an injury done to the public; the defendant, the relator, and the judicial power to ascertain the truth of the charges, the board of trustees.

Witnesses were sworn, their evidence taken and arguments heard. I read now from the Court of Appeals case cited here: "To administer oaths,"—you do that, do you not? "To hear evidence, to weigh its effect, to compare it with the law and to decide the questions presented, are of the essence of judicial action." It is a general, sound, principle that wherever the law vests any person or tribunal with a power to do an act and constitutes that tribunal a judge of the evidence on which the act may be done, the person thus clothed with power is vested with discretion, and is *quoad hoc*, a judge.

In this opinion it is said, however, and this is his answer to counsel in favor of upholding the removal. It was said, however, it is necessary for Mr. Thurber to act; that the board of trustees is the only tribunal that can take cognizance of the charges against the relator; that, therefore, it was necessary for the board of trustees to take action or it could not be taken at all, and that consequently the duty to act devolved upon each member of the board of trustees, notwithstanding he might be in such a situation as would disqualify him to act if a judge or juror," In other words, perfectly analagous to the situation this committee occupies here.

And the opinion goes on to say "Cases are to be found where judicial officers or officials acting in a judicial capacity, have been permitted to act notwithstanding the disqualification of interest, but I think without exception they have all been cases where unless such officer was permitted to act there would have been a failure of justice, for the reason that there was no other person who could act. They have been confined to cases where the

judicial tribunal or body to act consisted of but a single person, and there was no other tribunal or officer before whom the proceedings could be taken, and the officer was permitted to act from necessity. An exception to this general rule has never been recognized where the judicial body or tribunal consisted of more than one officer."

MR. RAINES: The Assembly having approved of the findings of the judiciary committee of the Assembly, and those findings having also been approved by the Senate, I wish to ask the counsel how far he would argue that the disqualification might extend.

MR. STANCHFIELD: I do not contend, gentlemen of the joint session, that any one in this House outside of the Assembly judiciary committee is disqualified by reason of the argument that I make. And I am putting it both upon law and a high standard of manliness that those men ought not to sit. It is an ethical as well as a legal argument. It goes to the very root of what self-respecting, high-toned men feel about when they ought to act, where they ought to act and how they ought to act. And I don't understand, in answer to my friend from Ontario, that when either the Assembly or the Senate voted to take jurisdiction of this case that any man to whom I am speaking felt that he committed himself with reference to the court or his attitude. I have heard further that in some other debates that took place men arose in their places in both the Senate and Assembly Chamber and declared that it was expressly understood by the adoption of these reports, in order to get this matter before the tribunal, they were not committing themselves with reference to any attitude they might thereafter take with reference to it.

Now, I have been endeavoring to convince you that you were sitting here as a court, with all the constituent elements of a court present, and in no other capacity. And that must, in the very nature of things, be true. What, in popular parlance, do we understand the court to be? It is some one to whom facts and evidence are submitted for that person to pass upon. You may call it an umpire, you may call it an arbitrator, you may call it what you please, but if he hears testimony, hears argu-

ments and renders a decision, he is a court. That is what you represent in this proceeding.

Now, I do not intend at this time nor in this place to go into a long, wearisome or prolix argument upon the significance nor the meaning of the word "cause" as embraced in section 11 of article 6 of the Constitution.

When this matter was pending before the Assembly judiciary committee I want this tribunal to understand that Mr. Coman and Mr. Stevens conceded that upon the facts in this case impeachment proceedings would not lie, and I call your attention to the report of that committee in which, in conclusion 6, they say, "that we are of the opinion that the acts of said Warren B. Hooker hereinbefore set forth in the several findings of fact do not constitute cause for impeachment." That was the concession of counsel at that time; it was the report of that committee, and the whole argument before the Assembly judiciary committee proceeded along the lines and upon the question as to whether or no the word "cause," as contained in section 11, was broad and comprehensive enough in its scope to take in a case similar to the one at bar.

I am perfectly well aware that this body in one form or another has in a general way decided that the word "cause" was broad enough to embrace anything, the individual conscience of which any Legislature, any legislator, believed would justify him in doing. In other words, the word "cause" is so broad as to take in an act criminal in its character or an act that may be improper or immoral, and yet not measure up to the dignity of a crime. I repeat, in a general way I am cognizant of what has occurred in the respective bodies of this House with reference to the significance and the meaning and the broadness of the word "cause." I do not, therefore, purpose to take up your time in a definatory argument as to what that word means. We are here, however, with the earnest, insistent and abiding contention that under the peculiar facts presented before you here, it is not wise, it is not statesmanlike, it is not discreet to create a precedent for action under and by virtue of the provisions of article VI.

You recall that Senator Brackett, in his extremely resourceful and able opinion, admitted there was no precedent in this State for this case, and he had to travel outside his boundaries to find one; and he made reference to the case of Edward G. Loring, a probate judge of the State of Massachusetts, and while I am following along that line of my argument that it would be an unwise and a dangerous precedent to establish, let me briefly relate the history of that case, for it is the only one in the United States that is parallel or approaches a parallel.

In 1851, when Wendell Phillips, the royal prince among the orators of his day, was leading with such conspicuous ability the anti-slavery agitation in Massachusetts of those days, Edward G. Loring held a dual judiciary position. He was first a United States Commissioner under the Federal laws appointed by the President of the United States; he was in the second place a probate judge of the State of Massachusetts, elected by the people of the State of Massachusetts. When he took the office as a probate judge of the State of Massachusetts he was compelled to take an oath that he would support and obey not only the laws of Massachusetts, but the laws of the United States as well. Now, owing to this anti-slavery sentiment, the State of Massachusetts passed a local statute forbidding any of its judges to issue process to retain a fugitive slave. Now there came within the jurisdiction of Massachusetts a slave escaping from a Southern master. The owner followed him to the city of Boston and went before Judge Loring, not as a judge of the courts of Massachusetts, but as a Federal commissioner under the United States law, and asked of Loring, asked such Federal commissioner, that he issue a process or a warrant to retain this fugitive slave. The laws of the United States require him to do it. The oath that he had taken when he became a judge of Massachusetts required him to swear that he would obey the law of the United States; and he issued this process, and this slave was brought before him and turned over to his owner.

Now the Massachusetts Constitution contains a provision that a judge may be removed by address; that is, by a majority vote

of both branches of the Legislature coupled with a recommendation of the Governor. Now because of the fact that Loring was an elected judge of the State of Massachusetts and had issued as a Federal judicial officer, under Federal law, this process, Wendell Phillips went before the Legislature of Massachusetts and asked for his removal, and two-thirds of each house voted for his removal and the Governor refused to sanction it. They took it up the next year and the Legislature again voted to remove him, and Nathaniel W. Banks, then Governor, approved of it; and he was removed from office as a judge of Massachusetts for an act that he had done as a Federal judicial officer under the United States government. And upon the happening of that event the President of the United States made him a judge of the United States court.

Now those are the facts that surrounded that removal, and I want to ask at the hands of the conservative men gathered around this semi-circle whether they believe that the establishment of that sort of a precedent, where no allegation of an immoral wrong was made, where he was acting under his oath in accordance with law in one capacity as a judge, that it reflects any particular credit or throws any luster upon the history of Massachusetts.

MR. BRACKETT: It was claimed there, was it not, Mr. Stanchfield, that the action of the commissioner gave evidence of such moral obliquity and such a sense of the indecency of the practice of sending back the slaves that it satisfied any one that he was unfit to act as a judge?

MR. STANCHFIELD: That was the argument of Wendell Phillips, but I presume Senator Brackett will grant me that I am correct in my statement of fact, that in the issue of the process in everything that this man did, he acted under the United States law, in accordance with his oath of office, and did just what the law required him to do, and if he had not done it he would have been impeached in the courts of the United States.

Now so much for the question of precedent. We believe in the presentation of this case that this precedent ought not to be

established, for the reason that it disturbs the harmony of the provisions made in the Constitution of this State for the equality of the three branches of the government, the executive, legislative and judicial; and it is our serious and earnest contention before you that it is unwise, not characteristic of good statesmanship, for the Legislature, even though you may claim under the word "cause" the technical and arbitrary power so to do to reach out the strong arm of the legislative branch of the government and assert its premises and overbearing influence upon the judicial arm of the government and remove a constitutional officer of a coordinate branch of the government in this desultory sort of a way without the safeguard of a judicial trial.

Some years ago, and I again go to Saratoga for my law, and my friend Senator Brackett was one of the counsel in the case, and I refer to the people upon the relation of Burby against Howland, reported in 155 N. Y., at page 270. The Legislature had passed a law abolishing indirectly the office of a justice of the peace in one of the towns, to wit: Fort Edward, in that locality.

MR. BRACKETT: Establishing a police justice and forbidding justices of the peace to exercise certain functions.

MR. STANCHFIELD: Well, it tested the constitutionality of a deprivation of a justice of the peace of certain powers that were incident to his office. The facts in the case I care nothing about. I call your attention specifically, and it is my object in adverting to it at all, to some of the language by Mr. Justice Van Brunt, page 282; and I address it to the good conscience of every man that is gathered around this semi-circle.

"The object of a written Constitution is to regulate, define and limit the powers of government by assignment to the executive, legislative and judicial branches distinct and independent powers. The safety of free government rests upon the independence of each branch and the even balance of power between the three. Unite any two of them and they will absorb the third with absolute power as a result. Weaken any one of them by making it unduly dependent upon another and a tendency toward

the same evil follows. It is not merely for convenience in the transaction of business that they are kept separate by the Constitution, but for the preservation of liberty itself, which is ended by the union of the three functions in one man or in one body of men. It is a fundamental principle of the organic law that each department should be free from interference in the discharge of its peculiar duties by either of the others.

“Nothing is more essential to free government than the independence of its judges, for the property and the life of every citizen may become subject to their control and may need the protection of their power. Not a contract is made except in reliance upon their ability to afford redress if it is violated. Men part with property upon the promise of their fellows, walk the streets by day and sleep in peace at night in the confidence that the silent and unseen power of the judiciary is always ready to protect their rights. Any legislation that hampers judicial action or interferes with the discharge of judicial functions is in conflict with the principles of the Constitution. Whenever a judge, however humble, is authorized by law to hold a criminal court, established by the Constitution, and to require executive officers to serve his warrants and enforce his judgments, the Legislature cannot leave him the power to act, and withdraw from him the power of compelling obedience to his lawful mandates without affecting his independence and depriving him of the essential powers of a judge.”

Now, I have heard made here during the progress in one phase or another of this cause celebre the contention that this is not only a mere legislative proceeding, but that in the removal of Justice Hooker that removal does not visit upon him punishment; that he is simply, as I have heard the chairman of the Judiciary Committee state it, he is simply removed from office, the people simply take back from him that which they gave to him. Now, let us see whether or no that be true. It does not require much argument here to convince this joint session that the removal of a man who was elected to an office fourteen years in duration, that yields him in his present position as a member of the Ap-



pellate Division in the city of Brooklyn \$17,500 a year, not only touches beyond the power of words to describe his sense of refinement, his family, his friends, but the office that he holds is a property right as well. And when the statement is made that this removal does not involve punishment, I purpose to answer it, in no language of my own, but I want to demonstrate to the men I have heard make that assertion upon the floor here that it is not punishment, that the Supreme Court of the United States has held that it is the most serious kind of punishment. And I call your attention now to a decision of the Supreme Court of the United States in the case of Cummings against the State of Missouri in the 4th of Wells, at page 320, and read from the opinion of Mr. Justice Field:

We do not, he says, agree with the counsel of Missouri, that "to punish one is to deprive him of life, liberty and property and to take from him anything less than these is no punishment at all." The learned counsel does not use these terms life, liberty and property as comprehending every right known to the law. He does not include under liberty freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honor. The deprivation of any rights, civil or political previously enjoyed may be punishment; the circumstances attending the causes of the deprivation determining this fact. This qualification from office may be punishment as in cases of conviction upon impeachment. Disqualification from the pursuits of a lawful avocation or from positions of trust or from the privilege of appearing in the courts or acting as an executor, administrator or guardian may also and also has been imposed as punishment.

And he goes on to say, and I want to call your attention to this section—the theory upon which our political institutions rest is, that all persons have some inalienable rights, that among these are life, liberty and the pursuit of happiness and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one and that in the protection of these

rights all are equal before the law, Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined. Now I want again to say that Mr. Justice Field has declared in this decision that to remove a man from an office of trust, emolument and provide for his punishment in the strictest sense of the term punishment not being therefore restricted as contended by counsel to the deprivation of life, liberty or property but also embracing deprivation or suspension of political or civil rights.

Now I wonder if any of you men recall the discussion and the termoil that have taken place in the English courts over the passage of the bills of attainder, that the Constitution of the United States here forbids the passage of bills of attainder. If Justice Field is right when he says to remove Justice Hooker from the civil and political office that he now enjoys is punishment then you are passing here a bill of attainder which inflicts punishment on this judicial trial.

The point I desire to make is this. Senator Brackett has quoted this language from Hallam: "No judge can be dismissed from office except in consequence of a conviction for some offense, or the address of both houses of Parliament, which is tantamount to an act of Legislature. And I call it home that if you pass this resolution under the facts in this case the removal of Justice Hooker is tantamount, in that light, to an act of Legislature, and if I am right in my argument, and Justice Field's law appeals to you that such removal is punishment you are placing this body in a position of depriving Judge Hooker of his rights, without a judicial trial.

MR. FISH: I am sorry to interrupt the continuity of counsel's argument but is it not well understood that a bill of attainder is something which deprives a person of some future right or some future privilege?

MR. STANCHFIELD: Not at all, it is a Legislative act, and the reason I answer that, I read the definition right from the Supreme Court of the United States: "A bill of attainder is

a legislative act which inflicts punishment without a judicial trial.

It may remove him from office or it may provide, as it did in the English history, that where any man or set of men espouses the cause of some of the nobility they would receive either for past or future causes——

MR. FISH (interrupting): Wasn't a bill of attainder in English history always applied to future privileges or future right?

MR. STANCHFIELD: I have not read sufficiently to answer that question. I am answering simply the statement as to the definition of it. My recollection is it applies either to past or future offenses.

Now, having called your attention to the proposition involved and the consequence as flow from action upon your part in this matter, I invite your serious consideration to certain provisions of the United States and State Constitutions. Before I proceed with that line of argument I want it understood by every member of the joint session that there are five offenses in the statement for removal laid at Judge Hooker's door, every one criminal in their character; the first four, his acts in reference to Frank P. Ball, Maurice Hooker, Henry J. Pemberton, George Cooper, Thomas O'Neil, Ora Caldwell, Minerva Jeffrey and Katherine K. Clark, are all conspiracies to defraud the government of the United States; in other words criminal accusations against the United States law. The fifth constitutes a charge of conspiracy with Lester F. Stearns in violation of the criminal law of this State, so that, in reference to the argument to which I am now about to invite your attention, and that is that you can't proceed under section 11 of article 6 to remove a justice of the Supreme Court for charges that are criminal in their character.

Now, let me read article 5 of the amendment to the United States Constitution, which reads as follows:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia in actual service in time of war or public danger."

Now, it does not require any argument for me to convince at least the lawyers who are listening to me that Judge Hooker is held to answer here. You have served upon him accusations of crime, and you require him, if he defends, to come and be heard. In other words, you hold him to answer here upon a criminal charge, and if you find the proof establishes the charges, the penalty that you impose is to remove him from office. So that he is held to answer upon a criminal accusation and I read from section 6 of the State Constitution, which differs slightly in its phraseology:

"No person shall be held to answer for a capital or otherwise infamous crime, except in cases of impeachment and in cases of militia when in actual service and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit nature under the Legislature, unless on presentment or indictment of a grand jury."

Now, our argument is that you are holding Judge Hooker to answer here an indictment charging him with criminal offenses, and there are only two ways under the Constitution of this State in which you have a right to take jurisdiction of a criminal offense, first, a court of impeachment; second, upon indictment by a grand jury. And there is no other method of process, or way known to the law of this State under which you can take jurisdiction and cognizance of a citizen, charge him with a crime, convict him and remove him from office unless you violate the spirit and the letter of the provision to which I am calling your attention.

MR. BRACKETT: Are they infamous?

MR. STANCHFIELD: Now, in logical sequence, Senator Brackett asks what I was about to say, whether or not these

are infamous crimes. Of course, that is a necessary element that goes into my argument, and they are infamous crimes because any one of those accusations carries with it punishment that may involve confinement either in a penitentiary or a State prison, and every crime which may involve either confinement in a penitentiary or a State prison is an infamous crime. And in support of that doctrine I read from the Supreme Court of the United States:

"The purpose of the rulings in those cases is that a crime which is punishable by imprisonment in the State's prison or penitentiary is an infamous crime, whether the accused is or is not sentenced or put to hard labor."

So it is clear that the crime in the present case is an infamous crime, although it does not appear either that sentence was imposed or that hard labor was provided for.

I have here causes in the State courts too numerous to render it necessary to read. It will be conceded—I think Senator Brackett has made the admission here—that an infamous crime is one that may involve imprisonment.

MR. ROGERS: Mr. Stanchfield, can I ask a question?

MR. STANCHFIELD: Surely.

MR. ROGERS: Have you considered in connection with the argument the Wall case, I think it is, in the United States Supreme Court, quoted in about the 107th U. S., which passes upon the question of the removal of an attorney, disbarment, where the same argument was used?

MR. STANCHFIELD: Well, to what effect do you mean, Mr. Rogers?

MR. ROGERS: To the effect that the charge of the commission of an offense which could be prosecuted criminally was not an invasion of that principle of the Constitution which you have stated.

MR. STANCHFIELD: I have not seen it.

MR. BRACKETT: Mr. President—while you are interrupted, Mr. Stanchfield, if I may ask a further question, does your argument go to the extent that if, for example, Judge Hooker was here charged with a persistent violation of catching fish that were out of season or under size, or driving over a bridge in violation of the local provisions, or of over-speeding his automobile, do you still believe that if any charges at all were made and proceedings taken before the Legislature, that those would have to be taken by impeachment?

MR. STANCHFIELD: I do not. And I do not because they are not infamous crimes.

MR. BRACKETT: If they were made a felony and punishable by imprisonment in the State's prison or penitentiary?

MR. STANCHFIELD: That would bring them within this provision which I will briefly read: "No person shall be held to answer for an infamous crime"—I skip the word "capital"—"no person shall be held to answer for an infamous crime except in case of impeachment, unless on presentment of a grand jury." And if the punishment for the act involves imprisonment, it is infamous, and it violates that provision of the Constitution. It can't be otherwise. This is a criminal accusation. And I want to talk to the lawyers upon this subject. It is a criminal accusation. If he were convicted he would go to State's prison. Now, you propose to punish him, because I have demonstrated that the Supreme Court of the United States holds to remove him is to punish him, and the Constitution of the United States if you are going to punish you must do it in one of two ways, that is, either impeach him or indict him.

MR. MATHEWSON: Mr. President, suppose it was discovered a justice of the Supreme Court had committed an infamous crime which had become outlawed, and it was sought to remove him after the statute of limitations had run against him?

MR. STANCHFIELD: My answer to that is: from the time a man commits a crime, the community is bound, as matter of

law, to know it; they are presumed to know it, and if the statute of limitations runs it is the same in equity and law and good morals, as though the man had never committed a crime. There is no pleading of the baby-act, no subterfuge, no criticism to be passed upon a man who pleads the statute of limitations, and if it were not for going into personalities I could cite some well-known cases in the city of New York where that has been done, and I have yet to find that the people at the polls, where the man has set up that defense, have ever repudiated him.

I call your attention to this fact, four of the charges in the indictment against Mr. Justice Hooker are drawn under section 5440 of the Revised Statutes of the United States, which reads as follows:

"If two or more persons conspire either to commit an offense against the United States or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than \$10,000, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the court."

That is, a conspiracy to defraud the United States government; it is the accusation which is contained in the first four of the charges against Justice Hooker——

MR. BRACKETT: May I ask one more question without interrupting counsel's line of thought?

MR. STANCHFIELD: If I have not got a case which will stand cross-examination, I do not want you men to listen to it.

MR. BRACKETT: Are there authorities to the proposition as to whether a conspiracy under that statute extends beyond a conspiracy to defraud the United States government out of money?

MR. STANCHFIELD: To defraud?

MR. BRACKETT: That is, can a conspiracy be held to lie, an indictment for conspiracy, under that section, except to defraud the government out of money, or money value?

MR. STANCHFIELD: Yes, or to commit a crime, either in that section or in others. I mean that the United States statutes provide for both classes of cases, one being an intent to defraud the government of money, and the other to commit an offense against the government.

MR. BRACKETT: I have in mind that there is a decision somewhere that it is an attempt to defraud the United States to attempt to evade the Civil Service Law, even if there was no money defrauding attempted.

MR. STANCHFIELD: I am very clear that there is a statute which makes a conspiracy to commit a crime an offense against the government. It would be a matter of study whether that would take in an attempt to evade the Civil Service Law.

MR. CARR: May I be permitted to answer the question of the Senator from the Twenty-eighth? There is such a decision in the United States courts, that under this provision of the statute an attempt to evade the Civil Service Law is a conspiracy.

MR. BRACKETT: I think I have seen such a decision.

MR. CARR: There is such a decision.

MR. STANCHFIELD: My argument was proceeding along the line that each of the accusations embraced in the statement of charges involving an infamous crime, and therefore subject to imprisonment—there were but two ways, first by impeachment, second by presentment by a grand jury, that Judge Hooker could be proceeded against. Now in a necessarily hurried sort of way, for I am very thoroughly aware of the fact that time is rapidly running, I want to call your attention to what these charges are:

First, the accusation is that Justice Hooker, in connivance with George W. Beavers, secured the appointment of Frank P. Ball to a Federal place, with the intent of defrauding the government of the United States. The second charge is a similar allegation with reference to Maurice Hooker. The third with reference to Thomas O'Neil, Ora Caldwell, Minerva Jeffrey, Henry J. Pemberton and George Cooper. The fourth is with reference



to Katherine K. Clark, that he conspired with Melvin Taylor, the postmaster, and Beavers, to evade the Civil Service Law of the United States government, and thereby committed the crime of conspiracy.

The fifth accusation is that he connived and conspired with Lester F. Stearns to procure the entry of a false, fraudulent and illegal judgment against the city of Dunkirk, with a view to defraud and injure the city.

Now I would like to invite your attention for a moment to this situation, in line with my theory and my argument that in a case of this character, criminal in its nature, you ought not to proceed under this section. Lester F. Stearns is the chairman of the State Board of Taxation. He is appointed by the Governor of the State upon the confirmation of the Senate. Now he is a subordinate of the executive arm of the Governor. If you wanted to remove Lester F. Stearns for the acts embraced in the fifth charge against Judge Hooker, it would require what? It would require the concurrent action of the Senate and the Governor before you could remove Lester F. Stearns for just the facts that are set out in the fifth statement of causes against Judge Hooker. In other words, it would require the Senate and the Governor, it would require co-ordination upon the part of the executive and the senior legislative branch of the government before you could remove Stearns. And yet is it to be contended here that you men will remove an elected member of a co-ordinate branch of the government under the plan and procedure outlined in this removal section. In other words, I call your attention to the necessity of the immense action required and the care that would surround the one as against the indifferent way in which you would proceed as against the other. It may not perhaps be necessary for me at this stage to go into minute detail with reference to Justice Hooker's defense as to these charges. From a reading of the evidence, much of it has developed. I have this to say that there are two theories, as I have read the history of this case, upon which the accusers of Justice Hooker ask you to take this summary action against him.

Their position is that Warren B. Hooker, in the locality in which he lives, was a man of such commanding influence and power that there was in the community required and exacted from him a higher and a larger degree of duty—a duty that was commensurate with his power and position in reference to the appointees he selected for public places. Now, if that be true, have I not the right to ask from you that he should be proportionately released and absolved from giving attention to the details of these affairs? If he was the leader of Chautauqua and Cattaraugus and Allegany, and if his high position elevated him above his constituents to the sphere they say he lived and moved upon, he ought not to be expected, in a spirit of fairness, to be intimately acquainted with the question as to whether or not Maurice Hooker or Frank Ball were engaged in the daily performance of their duties as laborers in the postoffice at Fredonia.

There would be confessedly, no crime in law or morals in appointing Frank P. Ball to the place that he filled; there would be no wrong in his taking his salary and applying it upon a note upon which for a time Mrs. Hooker was an endorser at the bank, unless the evidence showed that Ball's appointment was secured with the understanding upon Hooker's part that he never was to render services.

If Judge Hooker knew that Ball never intended to do any work, and secured the place for him knowing that he never meant to perform services, he ought to be removed from his place or convicted of an offense. But before you can find that he was a party to such a conspiracy, even with reference to Ball, or Maurice Hooker or Kittie Clark, or Thomas O'Neil or to Lester Stearns, you have got to disbelieve the sworn testimony of every witness that has been read in our hearing. If Ball tells you the truth, Hooker never knew it; if Taylor, or any of these witnesses, told you the truth you cannot find that Hooker was a party to these conspiracies, unless you cast aside and disbelieve every statement read in your hearing.

Now, in a general way, the comment that I made upon the case of Frank P. Ball is applicable to Maurice Hooker. You must have observed in the evidence here that Mrs. Hooker, long years before Ball ceased to be an employee of the postoffice at Fredonia, passed off this note, and her liability upon it had terminated. I propose to produce her here and prove that there was no money consideration ever passed from her to Ball; that it was an accommodation endorsement and that she went upon this note because of the intimacy and friendship of a lifetime that had existed between Ball and her father and herself. The same general line of evidence is true as to Maurice Hooker. Mr. Taylor, the postmaster, an old man, something like seventy-one or two years of age, in feeble health when he was here, forgetful, difficult for him to express himself, was an appointee of Judge Hooker. He held this place by virtue of Judge Hooker's influence as a member of Congress and with the notion of doing Judge Hooker a kindness he asked that this boy be made a laborer in the postoffice. Whether or not he worked there, what he did or did not do, was not brought home to the knowledge of Judge Hooker.

You take the case of O'Neil and of Caldwell and of Cooper and of Pemberton and when you stop to think that Judge Hooker was the representative of that territory, and that the office at Fredonia was soon to become a classified office, and you bear in mind the enormous demands for patronage and for place that are brought home to every representative in Congress, is it necessary for me, standing before an audience of men, made up of men who have passed years in political life and who know the tremendous and enormous demands for patronage, to ask whether or not you can criticize Judge Hooker because, at the request of a Republican organization in the locality in which he lives, he recommended these men for places with the view and expectation that when the office at Fredonia became classified that these men would be appointed as letter carriers in the employment of the government of the United States.

Can it be possible I repeat that in a tribunal composed of practical men who deal with practical questions in a practical way and who have had years of experience in political life, that a matter of that description ought to be laid with a spirit of condemnation at the door of Judge Hooker? They say he is measurable subject to criticism because of the fact that he occupied the high and elevated place of a Justice of the Supreme Court. They seem to forget that when the city of Jamestown, from which Mr. Stevens hails, wanted the government of the United States to erect for them in their beautiful city a magnificent government building, the citizens of Jamestown went to the door of Judge Hooker and knocked and asked him to go to Washington and use his influence that Jamestown might get a public building; and when it was granted and the cornerstone was laid, the people of Jamestown were so grateful for the service, although a judge, that he had rendered, that it had a mass meeting and feted and dined him and the orator of prominence upon that occasion, who poured out volumes of praise and commendation of Justice Hooker was Mr. Stevens who at the bar is leading the prosecution to-day.

When the city of Buffalo was having its Pan-American Congress and the city of Buffalo wanted the Federal Congress of the United States government to contribute half a million dollars to help along Buffalo in that enterprise a committee of a hundred citizens from Buffalo, of which John Milburn was the head, sent to Judge Hooker and asked him to go to Washington and spend his time to get that appropriation for the benefit of the city of Buffalo, and he did it, and the favor, the success, was credited to him. Nobody ever supposed that, as judge, he lowered the dignity of the bench or soiled the mantle that the law and custom throws around him. It was a great, a grand and noble act, because it helped these localities. They had benefited by his influence and his power. But when he tried to help some poor, lonely fellow that had helped him in climbing the ladder of political fame, and whatsoever else he may be he is not one of those men who has climbed into power

and place over the dead body of a prostrate friend. He is one of those who has stood by the boys, who carried conventions, that elected men to office, a practical man in practical politics to-day, and I do not believe that the Legislature of New York will condemn a man who has won success along these lines.

**THE PRESIDENT:** The Chair desires to state to the joint assembly at this point, that Mr. Wardman, the editor of the New York Press is in attendance in obedience to the subpoena served upon him. I desire to say in justice to Mr. Wardman that he has facilitated in every way the service of the subpoena. When it was first brought to his office he was out of town and he telephoned in that service be admitted, and this being refused, he came to town and received service of the subpoena formally, and has responded by his presence here in obedience to the subpoena, and he respectfully requests that the joint assembly, on account of pressing engagements that he has, will hear him at their early convenience.

**MR. TOMPKINS:** The day before yesterday counsel for respondent in this case called attention to certain articles which had been published in a certain paper in this State, and made the statement that if this had happened in a judicial proceeding that the author of the article would be easily adjudged guilty of contempt, and upon that statement the Senator from the Forty-second moved that a subpoena issue out of this body commanding the editor of that newspaper to appear before this tribunal.

I want to call the attention of this joint session to a statement which has appeared, an editorial in fact in the paper at the same time, the Newburgh News, in which it is stated that it is the attitude of certain members of this joint session, one Senator and two members of Assembly, and that it is further the duty of all the members of this Legislature to acquit or exonerate Justice Hooker.

If the statement which appeared in the newspaper already spoken of is easily such as to bring about a commitment for contempt on the part of the editor of that paper, this, it seems

to me, is aggravated by many times, so that I move you, sir, that the editor of this paper, one Frederick W. Wilson, be subpoenaed by this joint Legislature to appear before this body and show cause why he should not be adjudged guilty of contempt.

SENATOR RAINES: Before proceeding to a vote, which I shall hope will be taken immediately, I want to ask the honorable gentleman from the city of New York whether he sees any difference between advice to the Legislature, or the opinion of an editor published in a paper, that a party ought to be acquitted, and a charge that the party on trial is bribing through his counsel or others the Legislature? Let us have a vote on the proposition.

MR. TOMPKINS: In reply to the Senator from the Forty-second, I say I do not see any distinction. The statement made in the paper was a very general one, which has been afloat from the first of January up to the present time in connection with the members of this Legislature, and up to the present time no action has ever been taken by any member of this Legislature in connection therewith because they regarded it as absurd and silly.

Here we have a statement by a paper in which it practically interferes with the jury before they have rendered their decision. Such conduct as that warrants a commitment for contempt on the part of this Legislature by a great many more degrees than such action or such statement as was made in the New York paper.

MR. ROGERS: Will the gentleman yield for a question?

MR. TOMPKINS: He will.

MR. ROGERS: Is not the gentleman aware that a good many newspapers of the State have also expressed the opinion that the action of this joint assembly ought to be adverse to Judge Hooker?

MR. TOMPKINS: He is, and he is also aware of the fact that a great many newspapers in the western part of the State have stated the contrary, and that every single member of this Legislature has received copies of such newspapers within the past

three or four weeks. If you are going to bring one man here for contempt, or to show cause why he should not be adjudged guilty of contempt, then the proper thing to do is to bring every editor of every newspaper that has commented upon these charges.

MR. ROGERS: I desire to ask the gentleman one more question, that is if he considers the giving of gratuitous advice such a heinous offense why he singles out in his motion one newspaper instead of making himself accuser of them all?

MR. TOMPKINS: For the reason there is not a newspaper in this State that I have read that has come so near attempting to instruct the jury as this paper, and further, sir, the source from which this editorial emanates is of such character, of such kind, that it deserves a judgment of guilty of contempt on the part of this legislature.

SENATOR BRACKETT: I hope that the gentleman from New York, Mr. Tompkins, having had his opportunity to make his point, will withdraw his motion at this time. I violate no particular confidence when I say to him that instructions from Newburgh have not appealed to me at times any more than to him. (Laughter.) And having called attention to the immediate point which he evidently has desired to make, I hope he will not impede what I may call the orderly progress of the inquiry as to who is responsible for the charge that a big lobby exists for Judge Hooker and that boodle is being used here, and that scandal is thick in Albany. I should like to ask a few questions if I may that will find out who the man is who is responsible for that statement in order that we can see whether some one ought not to be punished if it is true, or if it is false the man who wrote it should not be punished. I hope, therefore, my friend from New York will not interfere with the orderly progress of what might be called an inquiry in that direction by this matter of which he speaks.

MR. TOMPKINS: I have no desire to delay the proceedings of this joint session but it is along the same line that the gentleman from the 28th desires to ask a few questions, as to why and

where this question of boodle arose and I also desire to ask the editor of the Newburg News who is directly responsible for this particular editorial. (Laughter.)

MR. ELSBERG: I do not desire to precipitate myself into this discussion, but if the gentleman from New York cannot see the difference between a charge that involves the honor of every man that sits on this legislative floor and involves the honor of every reputable lawyer on both sides, or certainly on one side of the case that is presented, I am sorry that the gentleman and I are graduates of the same law school.

I desire, Mr. President, because I do not see the business for which I understand the regular proceedings were suspended impeded or delayed; and without intending any discourtesy to the gentleman's motion I desire to move to lay his motion upon the table.

THE PRESIDENT: The question is upon the motion of the Senator from the 15th—this motion is not debatable.

MR. COGGESHALL: I rise to a question—

THE PRESIDENT: Those in favor say aye. Opposed no. Motion prevails.

MR. COGGESHALL: I simply rose to a question of inquiry. I regret exceedingly that I could not get recognition.

MR. PRESIDENT: The question of inquiry is not in order, upon a motion to lay upon the table.

Senator from the 42nd.

MR. COGGESHALL: I do not know of cases where a question of inquiry could not be made, where a request could not be made for a question asked, even before the question here before the body. That is all I have to say.

MR. RAINES: In response to the suggestion made by the gentleman from New York, on his speech, I wish to call attention to the fact that this is not a proceeding for contempt against Mr. Irving Wardman of the Press but simply a proceeding for the purpose of obtaining information.



THE PRESIDENT: The Chair so understands it. Is the joint assembly prepared to hear Mr. Wardman?

MR. BRACKETT: I ask that the oath may be administered to Mr. Wardman so that he may be inquired of.

IRVING WARDMAN, being duly sworn as a witness, testified as follows:

EXAMINED by MR. BRACKETT:

Q. Mr. Wardman you are connected with the paper published in the city of New York known as The New York Press? A. I am.

Q. In what capacity? A. Editor-in-chief.

Q. And have been so for some time, and were for the last thirty days? A. I was.

Q. Are you familiar in that capacity with the persons whose writings go into the paper? A. Familiar with the persons, yes.

Q. And you are able to tell from the paper as published what matter has been—or, otherwise, what matter that is published in the paper—the source from which it has come? A. No.

Q. You are not? A. No; not all of it.

Q. I want to call your attention to the issue of that paper of June 12, and calling your attention to the first column, which is headed "Big Lobby for Justice Hooker. Scandal is Thick in Albany," and ask if you will state for the benefit of this joint session who was the author of that article and place from which it came? A. I am unable to state who the author was.

Q. You are familiar with the article? A. Yes.

Q. You are unable to state? A. I am unable to state.

Q. Why are you unable to state, Mr. Wardman? A. I had supposed—I was out of town during this process; I was on a little vacation. I had supposed until I read in some paper two days afterwards, by Senator Raines I think the remark was, that our regular correspondent had written it. When I found that he hadn't from Senator Raines' statement I didn't inquire who had.

Q. Who was the regular correspondent of that paper at Albany during the twenty days prior to the morning of July 12? A. I suppose Mr. Relihan.

Q. Was there any alternative correspondent? A. Yes, he had an assistant here. I don't recall his name now.

Q. Who will know? Who does know? A. Oh, I would know if anyone could suggest the name.

Q. Mr. Cuyler? A. I beg your pardon?

Q. Mr. Cuyler? A. Yes, Mr. Cuyler.

Q. Mr. E. C. Cuyler? A. Yes.

Q. Where was the matter in this issue of July 12, in the first column, headed as I have stated, received by the paper? A. I don't know.

Q. In regular course where would such matter be received and by whom? A. By the news editor or the managing editor.

Q. Who was the news editor, and was for ten days prior to July 12? A. Mr. Scott.

Q. What is his first name? A. M. G.

Q. Residing here? A. I think in Brooklyn.

Q. And having regular office of course in the office of The Press? A. Oh, yes.

Q. Is he on duty at the present time? A. So far as I know.

Q. That is, he is not on his vacation? A. So far as I know.

Q. Mr. Scott, you say is the news editor? A. He is night editor.

Q. And he is one of the persons you named who would have received it? A. Yes.

Q. Who was the other? A. The managing editor.

Q. And who is he? A. Mr. Hennessy.

Q. Who was on during the day time? A. Mr. Hennessy.

Q. First name? A. John—J. A. Hennessy.

Q. Who makes up the headlines for matter received by the paper by correspondents, as this article appears to be? A. Well, there is a staff of what we call copy editors, and after the story is received and passed upon by the editor who has it in charge, he might give it out to any one of half a dozen or a dozen men to go over and what we call "edit."

Q. Who would determine the question as to whether this matter passed through the hands of the night editor or the news editor? A. What would determine?

Q. Yes; would the mere chance as to which one of them is present? A. It might be that; it might be the division of work they had made for the night, and the fact that one had been reading the stories on this trial right along and would naturally read the other, the next one come along.

Q. You have neither knowledge or information as to which one of the two, if either of those two, did receive this article? A. None at all.

Q. Where were you subpoenaed, Mr. Wardman? A. In New York City.

Q. When? A. Yesterday.

Q. At what point in New York city? A. At my office.

Q. You had seen from the press before you were subpoenaed the object for which you were to be called? A. No, I was out of town and I was called up by my office on the night before and informed that there was a man there from Albany with a summons for me, wanting me to go up in the Hooker trial. "Well," I said, "what does he want me for?" He says, "He wants you to go as a witness." I says, "I don't know anything about it, but can't somebody down there who knows about it go up?" He says, "No," he says, "you are the only one who will do." "Well," I said, "Tell him to let the office accept it, anybody there, I will go up and tell them what I know and what I don't know." And he refused to do that. So I said, "Well, I have got to come into town to-morrow to a directors' meeting and you may make an appointment for him at any time after twelve o'clock that suits his convenience and I will get down town and get over there and let him make the service," which he did.

Q. And what time did you reach New York yesterday, and were you subpoenaed? A. I was subpoenaed I think about one o'clock; I don't remember the exact hour.

Q. Annexed to the subpoena was a copy of the article, was there not? A. Yes.

Q. You saw that? A. Yes.

Q. And did you read the subpoena? A. Yes.

Q. That you were asked to come here to testify about the truth of the contents and origin of that article? A. Yes.

Q. So that at the time, or within a very short time, after you were subpoenaed, you did know the purpose for which you were to be brought here? A. I knew that I was to be brought here to testify as to what I knew about the truth or the origin, I supposed.

Q. At that time you were in the office of the paper? A. Yes, sir, for a while.

Q. Did you make any effort to ascertain the source or origin of this article? A. No, I did not.

Q. You didn't regard that as any part of your duty to the Legislature? A. I didn't consider that I had been instructed to do that. I thought the Legislature wanted to ask me about what I knew, and I was glad to come and tell it.

Q. You appreciated, did you not, Mr. Wardman, that the charges made in the paper were charges of a serious character? A. Oh, yes.

Q. That, if untrue, they were scandalous? A. Oh, yes.

Q. And if true more scandalous, did you not? A. I did.

Q. You understood from the service of the subpoena on you that you had been invited to, or it was the wish of the Legislature that you should come here in order that the Legislature might find out who was the author of the article, did you not? A. Yes.

Q. So that if he had any facts on which to base the article, any one who was guilty of the act therein stated, could be punished; you understood that, did you not? A. No, I don't think I was justified in stating that. There was no such information conveyed to me. •

Q. You had no suspicion of that kind, Mr. Wardman? A. No, I did not.

Q. Well, taking the other view of it, you appreciated, did you not, that it was the desire of the Legislature, in case this was false, to punish any one who was responsible for this statement, did you not? A. I don't think I did; no.

Q. Will you be good enough to tell this joint session what you did think we wanted the information for? A. Will I be in contempt if I do that.

Q. And is that the best answer, and the only answer, you are to give here, Mr. Wardman? A. I came up and was glad to come up here, sir, to testify to what I knew. I know some thing about the case, and I didn't make any inquiries about things that I didn't know.

Q. Will you state everything that you do know with respect to the author or origin of this article? A. The things that I know of my own knowledge concerning the whole case are these: Several days ago I started in to take my vacation, and before going I talked with the managing editor about this case, as well as other cases, of course, and every thing—

Q. And when you say "This case," you mean the trial of Judge Hooker? A. The trial of Judge Hooker.

Q. And who is the managing editor with whom you talked? A. Mr. Hennessy. I asked him what his opinion was about the probable outcome of the Hooker case. He told me.

Q. What did he say? A. He said he thought nothing would be done; and I asked him what reason he had to think that and he said that that was the best information that the office had from some people who ought to know.

Q. Did he state the names? A. He stated the names; he mentioned some of the names, yes.

Q. I want you to repeat the entire conversation, Mr. Wardman, so we will know who has been giving information in advance as to the outcome of this investigation? A. I said probable outcome.

Q. Yes. A. I don't think I can state those names.

Q. You don't think you should? A. I don't think I would. I think I shall have to decline to state the names.

Q. Why so? A. It is not the custom in my profession to betray confidences. We get a great deal of information, as every member of this body knows, no doubt, from our friends in the body, and our friends and other places, and the ethics of that stand is very rigid in my profession. We don't ever betray confidences, even when the refusal to do so would entail great hardships upon us.

Q. Do you regard, Mr. Wardman, that the breaking of the standards of ethics to which you refer,—do you regard that as a greater offense than to permit the Legislature to rest under the imputation charged in this article? A. I should regard that matter in this way, sir, that if these facts are so, and I did not question them when they were told to me, that the Legislature can possibly get at these facts without asking me to violate confidences.

Q. I think I must ask you the names that Mr. Hennessy gave you as the source of information that he had, which he called the best information that he had as to the probable outcome of this trial, and that you detail that entire conversation? A. I can relate what he told me as to the conversation, but I shall have to decline to tell the names.

SENATOR BRACKETT: I ask that the President of the joint session direct that he give the names and answer the questions.

THE PRESIDENT: The witness is directed to answer any question propounded to him by any member of the joint session.

SENATOR BRACKETT: And is directed to answer this specific question?

THE PRESIDENT: This specific question.

WITNESS: I must decline to give the names of the members who were quoted to me by Mr. Hennessy.

Q. In view of the direction of the President of the Senate—you have been directed by the President of the joint session, in the face of that direction do you still decline? A. I must decline.

I should like to make a little statement, if you will permit me, in respect to this matter, but I cannot give those names.

THE PRESIDENT: The witness may make a statement.

SENATOR BRACKETT: I ask you to make such statement as you see fit.

THE WITNESS: I should like to repeat that in my profession it is considered to be beyond the pale for any man to violate a confidence given to him when it is understood by him that he accepts that information in confidence, though he may use the matter to govern his actions, and that he must not betray the man who gives it to him. There is not a day that this does not happen to every reputable newspaper man in the city of New York. I think every member of this body is aware of that fact, because a great many of the members of this body converse with newspaper men confidentially with the certainty that they will not be dragged into a matter that they do not wish to be; and it not only would destroy a newspaper man's influence through his paper to violate such confidence, but it would bring the scorn of the whole profession upon him. I consider that to answer that question would degrade me, would dishonor me.

Q. You decline to do it? A. I might.

Q. You decline? A. Yes, sir.

Q. After understanding the direction of the President of the joint session? A. I do decline.

THE PRESIDENT: The President of the joint session thinks he would take the view of the joint session as to whether or not the question should be answered. It is a matter for the joint session itself to pass upon. All those in favor of directing the witness to answer the question——

MR. J. T. SMITH: I believe the object of this joint session in issuing this summons was to ascertain the author of this article. I believe this is not pertinent. I think we can get the author of this article in some other way. The gentleman declines as a matter of confidence.

THE PRESIDENT: It is a matter of the joint assembly to determine. Those in favor of directing the witness to answer will rise.

THE CLERK: 96.

THE PRESIDENT: Those opposed to directing the witness to answer will rise.

THE CLERK: 23.

THE PRESIDENT: It is the sense of the joint assembly that the witness be directed to answer.

By MR. BRACKETT:

Q. Now, Mr. Wardman, I again ask you to state the names—or, a question having been put to you and the joint assembly having directed that you should be required to answer, do you still decline to state the names? A. I decline to commit that dishonor.

Q. And do you still decline to state the names? A. I decline to state the names.

Q. You may now state the balance of the conversation that occurred between you and Mr. Hennessy relating to this matter.

A. He told me that these members who were of influence and power had informed him that they did not think that it would be possible to have anything done to punish Judge Hooker. That was—that the matter had been arranged, that he should not be.

Q. State the entire conversation. A. I told him that that was a pretty serious thing for the party, and I was very much concerned about it, and I thought that his information was contrary to information that I had had, that the Legislature wanted to go ahead to find out the truth about the thing, and if Judge Hooker ought to be removed, would certainly remove him. He assured me that he certainly believed from what information had come from those sources that Judge Hooker would not be punished.

Q. Have you not stated the entire conversation excepting the names? A. In effect.



Q. With the exception of the names, which you have declined to give? A. In effect.

Q. Where did that occur? A. In my office.

Q. At what time? A. I could not say what time—a matter of perhaps two weeks ago, before I was arranging to go—

Q. After that did you have any other conversation with Mr. Hennessy on the subject? A. Very little. Not perhaps fifteen minutes all told; I have not talked with Mr. Hennessy in the last ten days thirty minutes.

Q. Do you recall any other conversation? A. No.

Q. With anyone else, with the night editor or news editor? A. No.

Q. Now did Mr. Hennessy in this conversation or in any of the conversations with you make any suggestion to you that there was a big lobby for Justice Hooker, that scandal was thick in Albany, or that there was any money being used in the interest of Judge Hooker, in words or in substance? A. Well, he suggested that very powerful pressure was being brought to bear. I suppose that would convey the substance—it probably conveyed that to my mind.

Q. Financial pressure? A. I think I so understood it, yes.

Q. The language he used was that very powerful pressure was being used in favor of Judge Hooker? A. Yes.

Q. Was there any suggestion of bribery? A. He did not say bribery outright.

Q. Did he say anything that conveyed to your mind the suggestion of bribery? A. Yes.

Q. What? A. Well, he mentioned the name of a corporation that was taking a large interest in the case. I thought perhaps it was likely that that corporation, if it wanted to accomplish its object, might spend money.

Q. What corporation did he mention? A. I don't know why I should not answer that question—The Delaware and Hudson, in fact he said.

Q. The Delaware and Hudson Company. That is a railroad company. Did he give you any details with respect to that? A. No, I did not ask for any details.

Q. And he did not volunteer any? A. No.

Q. Now, Mr. Wardman, having in mind the terms of the subpoena that was served upon you, the article that was annexed to it, knowing the purpose for which you came here, and not knowing, as you say you did not know, who was the author of the article, did you deliberately refrain from ascertaining so that no information could be obtained from you? A. If I had asked Mr. Hennessy, who has been in charge of the paper for the last ten days during my repeated absence from the office and sometimes extended absences, if I had asked Mr. Hennessy who wrote the article, I think he would have declined to tell me for the same reason that I have been compelled to decline to mention the names of those two gentlemen.

Q. Are you satisfied that Mr. Hennessy knows? A. I am not satisfied. I have not asked him.

Q. Have you seen Mr. Relihan since you came to Albany, or being subpoenaed? A. No, sir.

Q. Or Mr. Cuyler? A. No.

Q. Have you seen Mr. Hennessy, or Mr. Scott, since you were subpoenaed? A. I have not seen Mr. Scott; I talked with Mr. Hennessy night before last, before the subpoena, when I asked him if he would accept service for me; when he said he wouldn't I said I would come to town and accept it, myself. I saw him yesterday afternoon, after I had accepted service, about three minutes in all in the office.

Q. You made no inquiry? A. No, I didn't.

Q. Is there anyone that occurs to you that furnished Mr. Scott and Mr. Hennessy this article, to know the authorship of the article or its origin? A. There might be anyone of possibly ten or twelve copy readers; I would have no way of knowing who they might be; if they read or edited the copy they would perhaps recognize who wrote it.

Q. Have you someone who makes up the paper? A. Mr. Scott.

Q. Make up man? A. Night editor.

Q. To whom does the actual, physical custody of the manuscript come when it comes into the office? A. To the night

editor and they farm it out to sub-editors according to the importance they think the communication is; if they get in one thousand words and they think it is worth two hundred, they give it to the editor to get it in that, or forty——

Q. What becomes of the copy afterwards? A. It is spiked and usually destroyed the next morning.

Q. What becomes of the copy which thus comes in? A. It is spiked and usually destroyed the next morning.

Q. Spiked means it is put on a spindle? A. Yes, sir.

Q. And is destroyed you say, the next morning? A. All that isn't used.

Q. And what is used, what becomes of that? A. I think that is probably in the office now.

Q. So if it came in as manuscript the original handwriting is still on file in your office of this article which was used? A. Not necessarily, no.

Q. Well, in what case then? A. Well, if it were rewritten then it wouldn't be.

Q. Then would the original manuscript be destroyed? A. I think so. Might not be; there is no rule about it.

Q. Now take the article in question, and at the head of the news itself are the words: "From the regular correspondent of the Press." What does that indicate, "Albany, July 11." A. That indicates that Mr. Relihan wrote it and that is why I supposed he did until I read Mr. Raines statement. I think it was Mr. Raines; I am not sure about that.

Q. Do you know where Mr. Relihan is now? A. I do not.

Q. Did you see the Press of the 13th of July, the following day after the article in question was published? A. Yes.

Q. Did you see there on the third page an article headed "Hooker lawyers upset about news about their client." A. I did.

Q. Do you know who was the author of that article? A. I do not.

Q. Have you made any inquiry? A. I did not.

Q. You have made no inquiry or attempt to inform yourself as to the authorship of either one of them? A. I did not.

Q. That also purports to be from the regular correspondent at Albany? A. If it so states there.

Q. Is it headed from the regular correspondent of the "Press" and that would indicate— A. That would indicate it.

Q. That it was Mr. Relihan? A. That would indicate it.

Q. Do you know where Mr. Relihan was on the 11th of July? A. I supposed he was here. I haven't the slightest idea where he was.

Q. And do you know where he is now? A. I haven't the slightest idea.

Q. You have made no inquiry? A. I did not.

Q. Is Mr. Cuyler the only authorized substitute in Mr. Relihan's absence? A. So far as I know.

Q. You mentioned a few moments ago the different persons to whom incoming manuscript might go, Mr. Scott, Mr. Hennessy, I think, and there were some others. Will you give the names of the others? A. I couldn't do it.

Q. You say it goes to the night editor or news editor? A. I don't know the names of all of them.

Q. You do not? A. There are a good many of them.

Q. Does the question whether it goes to the night editor or not depend on whether it comes in during the hours that he was on duty? A. I should think it would naturally.

Q. And if it was received during his hour would it go to the night editor? A. It would go to him in the course of the night sometime.

Q. And whether when it first came in there as a dispatch or correspondence by mail you don't know? A. No. The telegraph editor might hold it over for an hour or two until the night editor was at leisure. The night editor has sort of general supervision over various things, and each department head gets him when he can. He is a very busy man.

Q. Do you know whether either of those articles, take for example the one of the 12th of July, whether that came by mail or telegraph? A. I do not.

Q. The one of the 13th? A. I do not.

Q. Do you know whether it came from Mr. Relihan, the regular correspondent? A. I do not.

Q. Have you any information on that subject at all? A. Not a particle.

MR. BRACKETT: Well, Mr. Wardman, I certainly have no wish, and I assume that the other gentleman of the joint session, have no wish to discommode other members of your staff more than necessary. If you have any means of finding out where this article came from they would be glad to have this information. If not, they would feel disposed to call up such other members of the staff as can be secured.

THE WITNESS: If you direct me to ask Mr. Hennessy or anybody else who wrote these articles, of course I shall do it immediately without hesitation. I can't promise that he will answer me.

By MR. SMITH:

Q. Would the paper publish an article as from the regular correspondent if not from the regular correspondent? A. I think it might.

Q. Without a signature? A. Yes; it might. He wouldn't sign his name.

Q. Is Mr. Cuyler, the assistant correspondent, here? A. Yes, sir.

Q. Is he now representing your paper? A. Yes, sir.

MR. SMITH: Mr. President, it seems to me Mr. Cuyler is the man we ought to look for.

THE PRESIDENT: It is a question for the joint assembly.

By MR. BRACKETT:

Q. Mr. Wardman, would the words "From the regular correspondent of the Press, Albany" be placed at the head of any article in the office in New York? A. I think it might.

Q. That often is done, is it not? A. Well, it isn't done entirely that way, but the regular correspondent will, for instance, send what we call introduction or will send the part that he thinks is important. The office will add the routine of the Associated Press to that. And I can recognize the ear-marks of the Associated Press throughout that story, some portions of it. I wouldn't know who wrote it. There isn't any question some of the Associated Press was in that article, to my mind.

Q. Some of the matter of referring to boodle, are you thinking of? A. No, boodle was only mentioned in the first line. I don't think that was A. P. matter.

Q. That you don't recognize as the product of Mr. Gavit. A. No, I did not recognize that as his product.

MR. ARMSTRONG: May I ask Mr. Brackett to ask Mr. Wardman what portion of the article he does recognize as probable A. P. matter, if he will?

By MR. BRACKETT:

Q. Can you indicate? A. I thought,—the way I recognized it was the distinct similarity of incidents related there by nearly all the newspapers. Some of the phrasing it seems to me was very close in all the newspapers, and I took it for granted,—I don't recall precisely what part of it was,—I took it for granted that was regular A. P. stuff and had been tacked on at the proper point.

MR. ARMSTRONG: Mr. President, one other question, if you please. I would like to suggest to Mr. Brackett before he takes his seat—I will ask permission to ask myself, the question.

THE PRESIDENT: It would appear to the Chair that the orderly method of procedure would be that any questions that are to be asked should be asked through Mr. Brackett who has assumed the examination.

MR. ARMSTRONG: It seems so to me.

THE PRESIDENT: The Senator from the Twenty-eighth, the Senator from the Forty-fourth has a question he would like to suggest be asked.

MR. ARMSTRONG: I would like to ask whether all matter that appears in this paper, all news matter of this character, does not, in the first instance, go to either Mr. Hennessy or Mr. Scott.

By MR. BRACKETT: I ask you that question? A. Not in all instances. Mr. Hennessy has an assistant and that assistant has two or three assistants.

Q. Who is the assistant to Mr. Hennessy? A. Mr. O'Leary.

Q. First name? A. J. J., I think.

Q. Who were the assistants of the assistant? A. Well, they vary, they revolve around the desk there, I couldn't name all of them.

Q. Have you any list of the editors, the night editor, news editors, sub-editors, copy-readers, any complete list? A. Oh, yes, indeed, not classified, but I have a list, of course.

Q. Here, have you? A. Oh, no.

Q. Can you give them without the list being before you? A. No, I couldn't begin to do that, I could give the names of several of them but I couldn't tell you whether they were reading telegraph or whether they were reading dramatic or whether reading foreign, that is a part of the office detail which I haven't had anything to do with, sir, for a good many years.

Q. Who would know about it? A. The news editor, night editor, managing editor, probably, not necessarily.

Q. Have you given the name of the news editor here? A. Well, we have no news editor, really, Mr. O'Leary.

Q. (Interrupting) He is the assistant? A. The news editor on our paper is, sir, a theoretic position, it is the man who looks after pretty much everything; one night it is Mr. O'Leary and another night somebody else.

SENATOR BRACKETT: Mr. President, Mr. Wade desires to ask a question if the President will permit.

THE PRESIDENT: The gentleman from Chautauqua, Mr. Wade.

Examined by MR. WADE:

Q. Mr. Wardman, is the owner of this paper a corporation?

A. It is.

Q. Who is its president? A. Mr. Einstein, Henry L. Einstein.

Q. Will you give the names of the board of directors? A. Myself and Mr. Holmes, Mr. William Holmes, Jr.

Q. And Mr. Einstein? A. And Mr. Einstein.

Q. Who is president of it? A. Mr. Einstein.

Q. What official position do you hold in that corporation? A. I am vice-president.

Q. And your other directors what? A. Secretary.

Q. And I suppose, Mr. Wardman, you have the ordinary and usual means of gathering information for the publication of news in your paper? A. The usual means, yes, sir.

Q. In your issue of the 13th are you aware of the fact you make reference to one member of this joint assembly who has been excused from acting in this matter? A. I think it states Mr. Wade has.

Q. What? A. I recall an article, some article or other, states Mr. Wade has been excused.

Q. It doesn't state that? A. Doesn't it?

Q. No, I think not. "As a matter of fact one member of the Legislature is one of the lawyers for Justice Hooker, and while a sense of the fitness of things will not permit to vote on the question of Hooker's guilt or innocence, everybody recognizes and many know, that he as well as another lawyer engaged in Mr. Hooker's case, have worked with great effort to create a sentiment among the members of the Legislature in behalf of Justice Hooker." A. I take that to be a statement of the fact.

Q. Did you know anything about that statement before it was printed in that paper? A. No, not a line.

Q. Have you any knowledge who wrote it? A. No, I haven't.



Q. What particular person connected with this paper was charged with the duty of ascertaining whether there is any truth in any article published in it? A. The person who gets——

Q. (Interrupting) I want his name? A. The person who brings the information to the office.

Q. So it isn't any particular individual who has charge of that? A. By the person who gets information is responsible directly to the man who accepts it.

Q. Mr. Wardman, do you run that paper, publishing libelous articles about people without any particular person having examined it to know whether there is any truth in the article published? A. Assuredly not.

Q. Now I want to know who has charge of that feature of your business, if any one? A. Well, I would try to explain what I mean. For instance we have an Albany correspondent, we have great faith in him, we think he tries to be accurate, we think he tries to be just. He usually has a conference with the superior authorities in the office about information which he has obtained and is very likely, such as in this case where he refuses or declines to mention names who his authority is, and he convinces the office, whether it is me or whether it is the managing editor or whether it is Mr. O'Leary, the assistant managing editor, that these facts are correct or that he believes them to be correct.

Q. If your correspondent from Albany wrote an article of this character and merely said to this official, whoever has charge of it, that he believed it to be true, would that insure its publication in your paper? A. If we had great confidence in the man, I should think so.

Q. Who have you got here? A. Mr. Relihan is our correspondent.

Q. Have you great confidence in him? A. I think so.

Q. Where is he? A. I don't know where he is.

Q. And in his absence, who fills that position here? A. I should assume that his assistant would, Mr. Cuyler.

Q. Now, if I understand you correctly,—is Mr. Cuyler here now? A. I don't know.

Q. Is he sitting before you here? A. I never saw Mr. Cuyler.

Q. Mr. Wardman, if I understand you correctly, it is your opinion this article was not written in Albany at all? A. It is my opinion that a large part of it was.

Q. A large part of it was? A. Yes.

Q. The first sentence,—do you think that was written here? A. No, I do not.

Q. It is made to appear it was written here by the first sentence, isn't it? A. Yes, it is in the story.

Q. That had the purpose of deceiving the public that read it, making them believe it came from the seat of action here? A. I don't think there was any intent to deceive.

Q. Perfectly manifest in the first sentence, is it not? A. If a man had the information, or thought he had it, I don't suppose it would make much difference whether he took a train and came to Albany and wrote it out, or whether he took a train and wrote it out in New York. If he wrote the article in New York he would put the Albany headline on it. Mr. Relihan frequently does.

Q. Now, Mr. Wardman, let me read you the first paragraph: "From the regular correspondent of the Press. Albany July 11th. It cannot be denied to-night that powerful influences are at work to keep Justice Hooker on the Supreme Court bench. There is both politics and boodle in this movement. Republicans and Democrats are concerned in it. Governor Higgins down stairs does not seem to be a bit disturbed by the cloud of scandal hanging over the Legislature." Now that was written in the city of New York, wasn't it? A. I don't know.

Q. What is your belief about it? A. My belief is that it was.

Q. Your belief is that it was by some person in the employ of this newspaper? A. Assuredly in the employ of the newspaper.

Q. And it was written in your office? A. I won't be positive of that.

Q. Now, don't you know that any person throughout the State, in the city of New York or throughout the State of New York, reading that article would assume that it was written by some person here in Albany? A. I suppose they would assume, but I don't think that would be at all a vital circumstance.

Q. You know you have been created judge of that yet? A. That is true.

Q. There is a fair probability you will not be? A. But for instance, as I said before, if Mr. Relihan comes down to the office for consultation, he writes his story in the office after consultation. He would put the Albany headline on it, but there would be no intent to deceive.

Q. Your belief is that putting the Albany headline on that article was putting in its very outset a false statement, wasn't it? A. Not a deliberate false statement.

Q. You have deliberate lies and those that are not deliberate, down there, for publication? A. I mean it is like putting a regular correspondent's—if you put some A. P. on the end of something that comes from another man, on the end of the story, that is newspaper procedure.

Q. Now, Mr. Wardman, the policy of your paper from the outset has been adverse to Judge Hooker in this matter, has it not? A. I don't think so. I think we have had very little to say on the subject. In fact, I was inclined to reserve opinion until the Assembly Judiciary report and we felt after that that it was a scandal for Judge Hooker to remain on the bench. I am free to say that.

Q. Now, sir, you recognize the fact that that article printed in your paper, charges the members of this Legislature with crime, do you not? A. Some of them. Not all of them.

Q. You recognize the fact that it is impossible from the article which you print, charging some of them with crime to pick out which ones you charge, do you not? A. I do.

Q. So you have made a blanket charge upon this assembly—this general assembly? A. I do not think the public will so take it.

Q. What? If you had written that article, Mr. Wardman, the section I just read to you, would you have expected the public to believe that you intended to charge members of this Legislature with crime? A. I don't know what I would believe if I wrote it, as I did not write it, it is pretty hard for me to say what I would believe.

Q. You have some knowledge of the ordinary interpretation of the English language, haven't you? A. I am perfectly willing to admit that the article implies that improper methods and corrupt methods were being employed in the Legislature in behalf of Judge Hooker.

Q. You know bribery is a crime, don't you? A. Yes, sir.

Q. You know an attempted bribery is a crime; you know when you use the term here "buddle is being used" you meant to convey the impression that members of this body were being bribed, or that some person or persons were attempting to bribe them? A. That is what it means, yes.

Q. So it was intended then to charge the members of this House with crime, wasn't it? A. Some of the members.

Q. What? A. Oh, undoubtedly.

Q. And also the counsel for Judge Hooker? A. I don't know, I don't think so. I don't think there is anything in that article that charges any such thing against the counsel for Judge Hooker.

Q. Now, sir, "immediately Hooker's lawyers began to lobby among the members of the Assembly." A. Lobby does not mean to bribe, does it?

Q. "When the roll was completed the vote was 49 to 47." Do you know who was meant by "Hooker's lawyers" in that sentence? A. I do not.

Q. Now, sir, you think it is a fair proposition for you, one of the stockholders and directors of this company, to use your paper to brand the members of the Legislature of the State of New York as criminals, as you have done in this article, and then to come here as one of the proprietors of that paper, under subpoena to tell the truth about it, and profess ignorance of who was the author of this article? A. I do not profess ignorance, I am ignorant.

Q. Will you, sir, between now and Monday night at 8.30—between now and 2.30 o'clock to-day, use your best endeavors to give to this joint assembly the name of the author of that article? A. Can you stretch that time a little?

Q. How long do you want it stretched? A. I would like to get hold of Mr. Hennessy on the telephone, and Mr. Hennessy is up all night, and is going out of town these nights and I could not get hold of him until he reaches the office. He probably won't reach the office until about three o'clock.

Q. Now, Mr. Wardman, there will be a disposition to string it to the end of this session if we don't find out, and to call upon every person that the process of this body will reach connected with that paper. Now, will you undertake to bring that information here Monday night at 8.30 or at some hour specified by yourself? A. I will not undertake to bring it. I will undertake to ask Mr. Hennessy who wrote the article.

Q. I don't mean you will agree to bring it. Will you endeavor to do it? A. I will endeavor to ask him. I will ask him.

Q. And if you get the information, will you—— A. If he gives me the information I will give it to you.

Q. Where is Mr. Hennessy? A. He is in New York.

Q. I am advised he will be at the office at 3 o'clock. Now, will you talk with him by telephone? A. I will.

Q. And get the name of the author of this article, if you can? A. I will ask him the name of the author.

Q. And will you come in at 3:30 or 4 o'clock and give that name if he consents to it? A. I will if he consents to it.

Q. Has he any more control over it than you have? A. No, he has less than I have.

Q. This is a case of the tail wagging the dog? A. If I commanded him to give me the name, I suppose he would have to do it,——

Q. Do you think Mr. Wardman—— A. (Continuing) I don't think I shall command him to give the name, I shall ask him to.

Q. Mr. Wardman, do you think that as an honorable gentleman you can do less than exercise all the effort within your

power to produce the name of the author of this article? A. I have no objection to producing the name of the author.

Q. I would like you to answer the question? A. Repeat the question.

Q. I say, do you think that you, as an honorable gentleman, connected with this newspaper as you are, can do less than exercise your utmost endeavor to produce before this joint assembly, the name of the individual that wrote that article? A. Well, I mean in so far as it does not compromise my honor not to divulge the name of the sources of the information of the writer of that article.

Q. Does your idea of that lead you to disclose the truth and allow innocent men to rest under the charge of crime that you have made in your paper in public print? A. I don't think the whole body is under the charge. I know every newspaper in New York almost has made the charge as well as I.

Q. You know, sir, that by the article the following day you charged me with lobbying with the members of this joint assembly in connection with this case, don't you? A. Yes; I haven't charged you with bribery.

Q. How? A. I don't think that is a charge of bribery.

Q. I don't think it is, but you charged me with lobbying with it? A. Well, we have so——

Q. (Interrupting) Have you any knowledge that there is a particle of truth in that statement? A. Only the confirmatory knowledge of other newspaper correspondents.

Q. Other newspaper correspondents, who? A. I think your name was mentioned specifically in the Evening Sun of the evening before; I won't be sure of that.

Q. Now will you endeavor to present here the name of the individual that wrote that article? A. No, indeed.

Q. Won't do it. I mean your second article? A. I thought you meant the Evening Sun.

Q. No, sir. A. No, I don't know who wrote the second article; I will inquire; I will make the same inquiry.

Q. Was it written by the same party? A. I don't know who wrote it.

Q. Well, have you got any judgment from the reading of both of them? A. I have none.

Q. Now, Mr. Wardman, we will expect to hear from you again at four o'clock. I understand you, Mr. Wardman, to say that if you commanded him to give you this information he would. A. No, I say he might.

Q. Because you have more authority there than he? A. Well, I meant I could exercise duress; I could threaten him with the loss of his position, but I wouldn't do it.

Q. Are you willing to? A. I wouldn't do it.

Q. You wouldn't exercise the power that you have? A. To compel him, no sir.

Q. To bring before the Legislature of the State of New York and the world the author of that infamous and scandalous article? A. I feel still that it would be for the Legislature to put that pressure upon Mr. Hennessy rather than me, just as it is putting the pressure upon me, sir.

Q. You know if we can reach the head of the institution we ought not to spend much time going down the line, each one professing ignorance? A. I don't know that each one will profess ignorance,—each one would be ignorant; I am ignorant.

Q. Will you be here at three thirty and give us such information as you can at that time about the author of this article? A. I will.

Q. Will you direct Mr. Hennessy when you get him on the 'phone, that the copy, the original of this article shall not be destroyed? A. Will I direct him?

Q. Yes. A. I will.

MR. RAINES: Mr. President will you please advise the witness that the subpoena is continued and he is to be here this afternoon?

THE PRESIDENT: The Chair so advises him. The joint assembly stands in recess until two-thirty o'clock.

At the hour of 1 o'clock p. m. the President and Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate stand in recess until 2.25 o'clock p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The hour of 2.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber.

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JOINT SESSION, ASSEMBLY CHAMBER.

THE PRESIDENT: We are ready to proceed gentlemen.

MR. STANCHFIELD: Call Arthur C. Wade.

SENATE CLERK: Arthur C. Wade.

ARTHUR C. WADE, being duly sworn, testified as follows:

EXAMINED by MR. STANCHFIELD:

Q. Mr. Wade, are you a member of the Assembly? A. Yes, sir.

THE PRESIDENT: It is necessary to have absolute quiet in the room during the giving of this oral testimony.

By MR. STANCHFIELD:

Q. Your place of residence is where? A. Jamestown.

Q. What is your profession? A. Lawyer.

Q. How long have you been practicing law in the city of Jamestown? A. About 23 years.

Q. Are you acquainted with Truman C. White, a Justice of the Supreme Court, living in Buffalo? A. I am.

Q. And is he one of the Justices of that official district? A. He is.

Q. Are you also acquainted with the Respondent, Warren B. Hooker? A. I am.

Q. How long have you known him; for how many years? A. In the neighborhood of 30 years.



Q. Did you upon occasion have a conversation with Judge White in reference to this so-called Wirtner judgment? A. I did.

Q. About when in point of time did that conversation take place? A. My recollection is that it was the latter part of May, 1904.

Q. And where did it take place? A. At the Iroquois Hotel, in the city of Buffalo.

Q. At whose instance or upon whose invitation? A. On the invitation of Truman C. White.

Q. Had he requested you to meet him there? A. He had written me a letter to meet him somewhere, not naming the place. He wrote me a letter to Little Valley, dated I think the 11th or 12th of May, 1904.

Q. Did you know on what he desired to see you? A. I did not.

Q. Did you know for what purpose he desired to see you? A. I did not.

Q. Were you informed by the contents of the letter as to the purpose for which he wished to see you? A. I was not.

Q. Now, you say you met him at the Iroquois hotel? A. I did.

Q. Will you tell us the conversation you had with him or the substance of it? A. I can tell the substance of it I think.

Q. What was it? A. He told me then about this Wirtner case. It was the first time I had ever heard of it and he told me they came down from Dunkirk and my recollection is he said Judge Hooker was holding Special Term and that Judge Hooker said to him that some parties were coming from Dunkirk in reference to an action in which he was a party and asked him if he would hear it. He consented to do so and they went into the little room off the Special Term room and the evidence was taken in there, and eventually the findings were signed and the judgment was entered. He then showed me a report made by Eleazer Green of the city of Jamestown in reference to this.

Q. Was Eleazer Green an official of Chautauqua County? A. He was then District Attorney of Chautauqua county.

Q. And was the report that Mr. Justice White exhibited to you at that time, the report that has been introduced in evidence here? A. Well, I can't state from my own knowledge because I don't know the report that has been introduced here.

Q. (showing paper to witness) I show you a copy of Ex. 104, Mr. Wade, and ask you whether or no, according to your recollection, that is the report that Mr. Justice White exhibited to you at that time? A. Well, I haven't read this all over, but my belief is this is the same thing, certainly some of it is, what was in the report I saw there on that occasion.

Q. Well, you may continue your narrative in reference to what took place upon that subject between Justice White and yourself at that time. A. Well, the substance of it was this: that Judge White gave little attention to the case and relied upon Mr. Stearns and the attorneys who were present in reference to it. He called my attention to the fact that the judgment had awarded affirmative relief to the defendants.

Q. That is Stearns and Hooker? A. Yes, and that that relief was awarded against the city of Dunkirk. I think the subject was mentioned that the answer was not served on the city, the answer of Stearns and Hooker, and his statement to me was that the judgment was not such a one as was asked for in the answer and I know I made this remark that if that was the case the judgment was a nullity on its face and he need not be much concerned about it.

Q. Is that all of the conversation? A. No, sir, it is not. He requested me, he told me then that he had asked District Attorney Green to go and examine this judgment roll and all the papers connected with it, that he was the only person who knew anything about it; that Green had done so and had furnished him with this report which he showed to me and he requested me to talk with Judge Hooker about it but not to disclose Mr. Green's connection with it in any manner, and it was finally arranged between us that I should call Judge Hooker up on the telephone that afternoon, which was Sunday.

Q. You were to call Judge Hooker up on the telephone for

what purpose? A. To tell him about this and ask what he would suggest in reference to it.

Q. Did you thereafter call up Judge Hooker on the telephone? A. I did from the Iroquois Hotel that day.

Q. Did he know anything about the judgment or the answer or the pleadings or the proceedings in the case?

MR. COMAN: I object to that as incompetent.

THE PRESIDENT: Objection sustained.

Q. Did you have a talk with him on the telephone? A. I did.

Q. Relate it. A. Well, I don't think I can repeat it. I told him about receiving the letter from Judge White, about my writing Judge White in reply to it and that I had never known until that day what he wanted to see me about and that it was about a case brought by Wirtner of Dunkirk, against himself and Mr. Stearns and the city of Dunkirk, and that what Judge White was complaining of was the character of the judgment that was finally entered.

Q. And what reply, if any, did Justice Hooker make you? A. That he didn't know anything about it and I repeated this and called his attention specifically to some provisions of the judgment as I had learned it there that day, and he still told me it was a matter he knew nothing about, or in substance that, and I finally said to him "Dismiss this from your mind, and when I see you I will try and make you understand what it was about. ●

Q. Was that all the talk you had with Judge White? A. That was the substance of the talk I had with him that day over the 'phone.

Q. Do you remember whether or no you saw Justice White again that day? A. No, I didn't; I didn't see him that day after he left my room in the Iroquois Hotel.

Q. In this proceeding or procedure in which you were engaged were you in any way interested for or did you act for in any way purport to represent Judge Hooker? A. In meeting Judge White?

Q. Yes. A. No, sir, I had never passed a word with Judge

Hooker in my life, never heard of it before, never heard such an action was brought and was pending. Knew absolutely nothing about it.

Q. What you did do was at the instance and upon the request of Judge White? A. Yes, sir, certainly. I met him pursuant to the letter he wrote me from Little Valley which gave no intimation of what he wanted to see me about. It particularly stated that it had no reference to any of the matters that had been published in the newspapers or so-called Bristow report. It enjoined upon me the most absolute secrecy.

Q. At the time when Justice White sent for you had the Bristow report become public property? A. Yes, sir, long before.

Q. In that report were allusions of one sort and another about the Dunkirk postoffice? A. Yes, sir.

Q. Are you personally acquainted with Mr. Green, the district attorney of Chautauqua county? A. Very well.

Q. After you saw Justice White and had that conversation with him in which he said no one knew anything about this matter except Mr. Green, did you have a talk with Mr. Green with reference to who prepared this report, Exhibit 104? A. I did.

Q. What did Mr. Green say with reference to it? A. This conversation, Mr. Stanchfield, was during the pendency of the investigation by the judiciary committee last spring. The newspapers had published the story that I went to Judge White in behalf of Judge Hooker and that Mr. Green had voluntarily constituted himself, as he put it, a smelling committee to smell this out.

MR. COMAN: Mr. President, I object to any conversation with Mr. Green as irrelevant, incompetent and immaterial.

Objection overruled.

Q. Go on. A. He said to me, this is the substance of what he said, it has put me in a pretty light that I have voluntarily gone and stuck my nose into an affair of this character," he said I think it is two years ago next month that Judge White first spoke to me about this, but I am not sure as to the time, and requested me to examine this judgment roll, the evidence and pleadings and everything pertaining to that in the county clerk's office of Chau-

tauqua county. I did so and further said he made an oral report to Judge White and Judge White then requested him to have Frank W. Stevens and James L. Weeks go with him and examine the judgment roll and make a written report with reference to it. He said we did so and then we made the report which you saw.

Q. And that is Exhibit 104? A. Yes, if it is, and I think it is.

Q. So that when Judge White told you that Mr. Green was the only man with whom he had communicated upon the subject he had before him, according to Green's statement to you, the written report which was the joint product of Green, Stevens, and of Weeks? A. Well, I cannot say. I have told you what he said to me; I have told you what Mr. Green said to me; and I will tell you what Mr. Weeks said to me if you wish it.

Q. In any event you had this written report? A. Yes, sir. I had it when I was with Judge White in the Iroquois Hotel. I remember that so distinctly because Judge White insisted that I should not mention the name of Mr. Green to Judge Hooker. And I never did mention it until after Judge White took the witness stand here last winter, when I regarded that he had removed the seal of secrecy.

Q. Now, Mr. Wade, do you recall there was a time when there was a hearing before a sub-committee of the Grievance Committee of the State Bar Association? A. I do.

Q. And upon that proceeding, or upon that hearing, did you attend in behalf of and as one of the counsel of Judge Hooker? A. I did.

Q. Did that sub-committee in its report make any allusion to the so-called Wirtner judgment? A. No, sir.

Q. Was there any testimony taken before that committee in reference to this Wirtner judgment? A. No, sir.

Q. Did you know as counsel for Judge Hooker, or was there any public offer made before that sub-committee, of the judgment roll in the Wirtner case? A. There never was. It was never mentioned before that Committee in my presence in any way, form or manner.

Q. Did you discover after that hearing closed that that sub-committee had been furnished with a copy of the judgment roll in the Wirtner case? A. I cannot say that I discovered it.

Q. Well, did you learn it? A. I was so informed.

Q. But it never was brought to your attention during the hearing. A. I never heard of it until after this matter was referred to the judiciary committee of the Assembly last winter.

Q. Upon the hearing before the sub-committee of the bar association, who represented the prosecution? A. Frank W. Stevens.

MR. STANCHFIELD: You may cross-examine.

THE WITNESS: One moment, Mr. Stanchfield. I want to make another statement about the conversation of Judge White and myself in reference to Mr. Towne. When we first met Judge White suggested to me the propriety of having this judgment set aside, and I said to him in substance that Mr. Towne had an office there in Dunkirk and it would be better to have him look into it, and I would ask him to look into it, and see what ought to be done about it. I did see Mr. Towne and requested him to do it.

MR. STANCHFIELD: You may cross-examine, Mr. Coman.

MR. COMAN: There is no cross-examine, Mr. President.

MR. STANCHFIELD: Will you call Lester F. Stearns.

LESTER F. STEARNS, called as a witness in behalf of the respondent, being duly sworn, testified as follows:

DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Mr. Stearns, where do you reside? A. Dunkirk.

Q. Your occupation or profession is what? A. I am a lawyer.

Q. And for how many years have you been engaged in practicing law? A. Well, something about 22 years.

Q. How many years have you made Dunkirk your home? A. I think about 25 years.

Q. Are you likewise at the present time a state officer? A. I am.

Q. What? A. State Tax Commissioner.

Q. And what position do you occupy upon the State Board of Taxation? A. Why, the Chairman of that Board.

Q. For how many years have you been a member of that board? A. Since about the first of October, 1899, I think it is.

Q. Are you acquainted with Warren B. Hooker? A. I am.

Q. Are you and Judge Hooker the owners of a piece of real estate in the city of Dunkirk upon which is situated the Post Office building so-called? A. We are.

Q. For how many years have you owned it? A. I think that I took the title to the entire property in August, 1900; subsequently, in the spring I think it was, March or April, of 1901, I conveyed a one-half interest in that property to Judge Hooker.

Q. When in point of time was the Postoffice building upon that property erected? A. I think the construction of that building commenced about June, 1901; I am not certain as to the exact time, but it was May or June.

Q. And it was completed and ready for occupancy when? A. It was largely completed in October; so much so that the post-office was removed into the building in that month.

Q. Before the erection of that building where had the post-office in the city of Dunkirk been located? A. It had been located in what is known as the Opera House Block, substantially at the foot of Central avenue, the same street upon which the new building is located.

Q. And when you say "substantially at the foot of Central avenue," what do you mean by that remark, as to its accessibility to the people of Dunkirk who had occasion to use the postoffice? A. Why, I should say as to that, that the old postoffice was in an inaccessible, inconvenient part of the city so far as the patrons and the people having occasion to go to the office were concerned.

Q. And what do you say as to whether or not people desiring to use it were or were not obliged to cross the tracks of the Lake Shore railroad? A. The principal residence portion of the city,

I think I could fairly say the principal residence portion of the city, is south of the tracks of the Lake Shore and Michigan Southern Railroad, and those people living or being south of the tracks, having occasion to go to the postoffice were obliged to cross the tracks, on some street.

Q. And that includes the greater population of Dunkirk? A. I would perhaps not be able to say definitely about that, but I should think so.

Q. At that time, 1901, about what was the population of the city of Dunkirk? A. I cannot tell you definitely, but my judgment about that would be that the population was in the neighborhood of 14,000, thereabouts. I do not recall any special figures in regard to it.

Q. You say in the neighborhood of 12,000—14,000? A. I should say so, 12,000 or 14,000.

Q. Had it a mayor? A. Yes, sir.

Q. And a common council? A. It had.

Q. Consisting of how many members? A. Eight members, two from each of the wards, there being four wards in the city.

Q. Where was this property located upon which you erected this new building? A. It was located next to what is known as the City Hall park, on the easterly side of Central avenue, between Third and Fourth streets, Central avenue extending, I think, substantially north and south.

Q. So that it was upon a corner? A. No, it was not upon a corner, the City Hall park was upon the corner proper and this building was next to, adjacent to, the City Hall park on the northerly side of that park.

Q. So that the city property ran up flush with the north side of your building? A. Yes, sir, adjoined it. The south side of the postoffice block and the north side of the city property adjoined.

Q. Now, came there a time when there was a discussion in the common council of the city of Dunkirk with reference to giving to you a lease of the right of access of light and air on the city park side of that building? A. You ask if there was a



discussion. I assume there was, although I was not present. The matter came up, however.

Q. It came up in what way? A. I think in the month of November, 1901, one of the councilmen offered a resolution.

Q. What was his name? A. I think it was Mr. Hogan, T. J. Hogan, offered a resolution looking to the sale of a fire hall property building belonging to the city, in the same block but further north toward Third street, and the erection upon a part of this City Hall park of a new building of some sort for fire hall purposes.

Q. How close to yours? A. Well, I think, if I recollect correctly—I am not positively certain—but I think it was on the easterly side of the City Hall park and it would be very close to our building. I cannot say whether it looked to erecting the building on the line or not, I don't recollect about that.

Q. Its erection in that locality would have had what effect upon your building in so far as light was concerned? A. If placed next to it of course it would have had the effect of cutting off the light, I think, from some of the windows in that building.

Q. And had that access of light that you had upon both sides been one of the primary causes that led to its being selected by the government for a postoffice building? A. What do you mean by both sides or do you mean three sides?

Q. Yes. A. Yes, I think it was.

Q. Now, what were your political relations with Hogan at that time that he introduced this resolution? A. They were not especially friendly at that time. He was a Democrat and I a Republican.

Q. Now, after that resolution was introduced what occurred in the common council? A. I haven't looked up the records, but my recollection of that is that it came to a vote. I think there were two councilmen who voted for this resolution and the remainder of those that were present at any rate, voted against it.

Q. Then what occurred? A. The resolution was I think that—well, immediately afterwards there was considerable of a

commotion in the city in regard to it upon the part of business men and everybody generally. I know I had a number—I think quite a number of the business men spoke to me about it and said that some steps should be taken so that an erection could not be placed upon this park property which would in any way disfigure or injure the park and at the same time cut off the light and air from our property; that there was no necessity for it wouldn't be for many years to come in all probability.

Q. Now, what occurred officially in the common council with reference to it? A. All I know is from the records. I was not present at any meetings.

Q. Well, what was it? A. Subsequently a petition was presented, as I recollect it, to the common council signed by quite a large number of citizens; I should say forty or fifty of the principal citizens and some of the largest taxpayers in the city, requesting in substance that steps be taken so that nothing should be placed upon this park, as I recollect it. I think that you have it in the record so that everybody knows what it is.

Q. Now, after the presentation of that petition was or was there not a resolution introduced in reference to the subject in the common council? A. There was.

Q. And are you able to give us in a general way what that resolution was? A. Why, it was in substance, that, as I recollect it—

MR. COMAN: Mr. President the resolution is in evidence in writing. It is the best evidence. I submit that oral proof is not competent.

THE PRESIDENT: Sustained.

MR. STANCHFIELD: That is all true, Mr. President, but it is part of the history of the case and Mr. Stearns was the owner of the building. If there is any objection to it I don't care anything about it but it makes it a clearer narrative that is all.

THE PRESIDENT: Counsel insists upon his objection.

Q. There was, you say, a resolution introduced? A. There was.

Q. And who was the mayor of the city of Dunkirk at that time?  
A. Daniel Scannell.

Q. Do you recollect whether or not the resolution was passed?  
A. Yes, the resolution was passed by the common council, the vote being, as I now recall it, 7 for the resolution and 1 against it. After that, or I think upon that occasion, if I recall the matter correctly, Mayor Scannell gave notice of intention to veto the resolution, and subsequently did veto it.

Q. And after his veto what was done with the resolution? A. After his veto, I think at the next meeting of the council—I was not in the city at the time—but at the next meeting of the council I think it was the next, the question of his veto came up and his veto was overruled by a vote of the council; I think 8 and 2 was the vote.

MR. GOODRICH: Six and two.

THE WITNESS: I should say six and two.

Q. There were but eight members? A. Six and two.

Q. Now, after the passing of the resolution over the veto by the mayor— A. Let me say, Mr. Stanchfield, in that connection, that before the passage—before the overruling of the veto in some way, I can't recall it, but in some way I communicated with the common council and said that if there was any controversy about it we would withdraw our request. We had previously, I think, filed a request for the lease as provided in the resolution. We would withdraw it and my recollection is very distinct upon that proposition that the council would not do it because, as represented to me, the people of the city wanted that property protected, both the city property and ours; the matter should finally be taken up and settled at that time so that neither property, the property of the city or ours, should be injured or should be used until such time as it became necessary. Now, I can't tell you, Mr. Stanchfield, in what form that was. I know there was some-

thing of the kind, some communication of the council from me as I recollect it, which was disregarded and the veto was overruled.

Q. Now, after the veto had been overruled and this resolution directing the execution of a lease with you passed, was there a taxpayer's action brought against you, the city of Dunkirk and Warren B. Hooker to restrain the execution of that lease? A. There was.

Q. Who was the plaintiff in that suit? A. Charles J. Wirtner.

Q. What were his politics? A. He was a Republican.

Q. Owing to your present position, I presume you will plead guilty to being the same. A. Yes.

Q. What were your political relations at that time? A. They were not pleasant or cordial.

Q. You had political factions up there in the Republican party? A. Oh, yes, occasionally.

Q. And you headed the dominant faction and he the minority? A. Well, I don't care to say very much about that, Mr. Stanchfield, we do not agree on some things politically.

Q. And this action was brought by him as a plaintiff. A. It was.

Q. Now, did you have a law office in Dunkirk? A. I did.

Q. Had partners? A. I did.

Q. What was the name of your firm? A. Stearns, Warren & Farnham at this time.

Q. At that time? A. Yes.

Q. Was a copy of the summons and complaint in this case served upon you personally? A. It was.

Q. Where did Judge Hooker live? A. At that time he lived at Fredonia, three miles distant.

Q. Can you recall whether or no you informed him of the institution of this suit? A. I did.

Q. How? A. By telephone.

Q. What did you say to him? A. I think it was, I won't be certain whether the same day the papers were served upon me,

that was the 23rd day of December, 1901, either the same day or the next day, I called him up over the telephone and said that Mr. Wirtner had brought an action against the common council, the mayor, I think the city clerk and myself and that he was named as one of the defendants; that I had been served, telling him when I had been served, and that it was a taxpayer's action. I think I told him it was relevant to the lease which had been granted us by the common council.

Q. Now in all of the proceedings that had been had down to that point with reference to the resolutions that were passed through the common council, or the contemplated execution of all the leases or matters of that kind, who had charge and supervision of it? A. Do you mean as for Justice Hooker and myself?

Q. Yes. A. I did.

Q. Was he ever consulted by you about it or did he know anything about it as far as you know? A. Well, I can't recall about that; I don't recall that he was.

Q. Now after you told him of the commencement of this suit, was there anything said between you upon the subject of his coming over there, if you remember? A. Yes.

Q. What was it? A. I asked him to come to Dunkirk and we would look the matter over and see what should be done about it.

Q. Did he come? A. He did; I can't remember certain what day. I think one of two days, I am quite certain about it, either the day before or the day after Christmas, the 24th or the 26th of December. I think it was one or the other of those days, but I can't recall which. It is barely possible I may be mistaken and that it may have been on Friday instead of Thursday, but sometime that week he came to the office.

Q. Did you tell him then the character of the suit? A. I can't say as to that; the summons and complaint, the papers, were there; he was either informed about it or saw the pleadings, I can't say as to that. I know he was informed in regard to it while he was there.

Q. Do you know how long he remained? A. Why, no, I have no means of knowing that except perhaps an hour or such matter, a short time comparatively.

Q. Was the answer prepared that day? A. It was not.

Q. When was it prepared? A. Why, my recollection is that the answer was dictated on Saturday, I think it was, either Friday or Saturday of that week the answer was dictated to Miss Saxton by Mr. Warren in my presence; Mr. Warren at that time was one of my partners.

Q. Is Miss Saxton your stenographer? A. She is; she was then.

Q. Was Judge Hooker there at the time? A. He was not.

Q. Who verified this answer? A. I did.

Q. Did Judge Hooker ever see the answer, so far as your knowledge goes? A. I never showed it to him, or never communicated with him as to anything it contained. Whether he got knowledge from any other source I don't know.

Q. Now after issue was joined in the action by the service of an answer, came there a time when you learned or had a talk with the plaintiff's attorney with reference to a disposition of the case? A. Yes, sir.

Q. Who was the plaintiff's attorney? A. Thomas H. Larkins.

Q. What conversation did you have with him? A. Let me go back a little before that, Mr. Stanchfield. There was a summons and complaint served upon me and that I understand was served upon the other defendants, the city, was an injunction order restraining, I think, any action being taken relative to the lease; an order to show cause contained in the same instrument for the defendants, I think, to show cause on Monday, the 30th day of December, why the injunction should not be continued. The answer was verified by me Monday morning at the office of Stearns, Warren & Farnham; it had been previously dictated; I went to the office that morning, took the answer and read it and I think made two or three corrections in it on account of a word or an error of the typewriter or something of that sort; I signed and verified it before Miss Saxton. I did this after a talk with

Mr. Warren, who was the attorney of record in the case, who was to go to Buffalo on that day, the 30th of December, on account of this return of the order to show cause. That order was returnable before the court; I don't think it mentioned any judge. I verified the answer that morning; handed it to Mr. Warren because he said he desired to read it on the return of that motion and serve a copy of it on the plaintiff's attorney. It was handed to him on that occasion. Some time later——

Q. Before we leave that, before who was that motion argued?

A. I was not present, my understanding is Justice White.

Q. Truman C. White? A. Yes, sir.

Q. Go on with your statement. A. Some time within a few days after that matter was argued in Buffalo, I saw Mr. Larkins, who stated to me in substance that the plaintiff did not care to go any further with his action. I think I told him on this occasion the assurances I had personally before the building was commenced that if we would put up a building taking the place of the old blacksmith shop which stood on this lot I had assurances from members of the common council there would be nothing put up there during the term of their office or the succeeding common council, nothing put up until there was a necessity for further space for city purposes. That was substantially the talk I had with him when he stated to me that they did not care to go any further and if we desired we could take the matter before some court, make proof of the facts and take such judgment as the court would give us.

Q. That was the conversation you had with the plaintiff's attorney? A. It was.

Q. Was Judge Hooker present at that conversation? A. He was not.

Q. What was the next step which occurred in the history of the litigation? A. On the 10th or 11th I had a talk with Mr. Warren, who was the attorney of record in the case, he having come home from Albany, in which I stated to him that the members of the common council did not desire to litigate this matter; either side didn't desire to litigate it; they wished to have the

matter closed up, substantially along the lines of the previous resolution of the common council; I would like to have some one go to Buffalo and make the proof and close this thing up. I had previous to this talked with Mr. Warren. After learning that the plaintiff did not wish to go any further I called Judge Hooker up by telephone and said the plaintiff did not care to go any further with this matter, would like to have him say if he could manage to have some court in Buffalo hear this matter and close it up, and suggested perhaps Justice White, having heard the original motion and being familiar, as I assumed, with the case, perhaps he could hear the case. He said he would speak to Justice White or some judge in Buffalo and he did so, saying to me, Justice White would hear the case whenever we got ready to present the proof.

Q. Now what was the object, Mr. Stearns, in going to Buffalo to take the proof? A. There was no court in Chautauqua county at the time this talk took place.

MR. ROGERS: Mr. President.

THE PRESIDENT: The gentleman from Broome.

MR. ROGERS: I do not feel that this joint session should be subjected to photographs and matters of that kind. I desire to ask whether permission has been given the gentleman with the camera.

THE PRESIDENT: The photographer in the rear of the chamber will please leave the chamber. (Laughter.)

You may proceed, Mr. Stanchfield.

THE WITNESS: There was a court beginning in Chautauqua county as I recall it, on the 20th day of that same month, the 20th day of January.

Q. Was that a special term or circuit? A. No, that was a circuit and special term together as the—

Q. At which there was a jury drawn to attend? A. Yes, sir, and that court was held by Justice Hooker.



Q. When was the next equity term? A. Just a moment, Mr. Stanchfield. I recall that Justice Hooker held that court; and to be certain about it, I investigated in the county clerk's office and I found from that records that was true. The next equity term as I recollect came in June.

Q. The following June? A. June, I think.

Q. So that there was at that time no court in Chautauqua county in which this judgment could be obtained? A. No, sir.

Q. You recognize as a matter of fact that Justice Hooker being a party could not entertain any proceeding in the action? A. Most assuredly.

Q. Now the suggestion that Justice White should act, if I understand you, came from you? A. It did by reason of the fact that, as I understood it, he had previously heard the motion upon the return of the order to show cause why the injunction should not be denied.

Q. And was therefore presumably familiar? A. Familiar with the case.

Q. Now have you any other motive in requesting Judge Hooker to ask Judge White to take jurisdiction of the case? A. I had no motive about it. It was a matter of indifference to me who heard the case.

Q. Now did you go to Buffalo at the time when testimony was taken? A. I did.

Q. Who went along with you? A. Mr. Larkins, the plaintiff's attorney, Mr. Farnham, at that time one of my partners, and myself, and I cannot be certain, but I have the impression that Mr. Nugent was there on that occasion; I have spoken to him about it and he don't recall it, and I cannot be certain about it, but the three of us were there on that occasion before Justice White.

Q. Were you sworn as a witness? A. I was.

Q. And gave evidence? A. I did. •

Q. Where were the findings of fact and the conclusions of law, either or both of them, prepared? A. The findings of fact, I think, were prepared in our office at Dunkirk, I am not certain

as to who prepared the findings of fact, but it was my recollection, and I would say it is my best recollection, that Mr. Warren prepared them on this occasion when he was home on the 10th or 11th of January, but I am not certain about that. I am sure that either Mr. Warren or Mr. Farnham prepared them.

Q. Was Justice Hooker present when either the findings of fact or conclusions of law were prepared? A. When the findings of fact were prepared I cannot say whether he was in the office or not, but I will say this that the only time that Justice Hooker was there at all from the beginning of the action until after its conclusion was the occasion when he came there, a day or two after the papers were served upon me.

Q. And it being the occasion which you have already described? A. Yes. Let me say another thing in this connection with the findings of fact. While I cannot say positively as to who prepared these, I know this, that I asked Mr. Warren on that occasion to stay over and make the proof in Buffalo; the following week I think it was that he stated to me that he could not do it, he at that time having a position in the Attorney-General's office here, and that it was important that he be back here; that the Legislature was just commencing its work and Mr. Davies, his chief, wanted him back there. And then he suggested to me that Mr. Farnham should go to Buffalo and take care of this matter, saying at the same time that Mr. Farnham, being my law partner and at the same time city attorney, could not appear in this matter in behalf of the city in case there was any defense upon the part of the city, which we knew at that time there would not be, and therefore, he being disqualified by being my partner from taking any action, and Mr. Warren being away, he suggested that I have Mr. Farnham go to Buffalo in his place and take care of the matter.

Q. Now, it is a fact, is it not, that Mr. Farnham was the city attorney of the City of Dunkirk? A. Mr. Farnham at this time of the talk about the 10th or 11th of January, was the city attorney of Dunkirk; the new city attorney, Mr. Cummings, was elected about the 20th, 21st or 22d day of January, which one of

these days I cannot say now, but it was within a day or two either before or after we went to Buffalo and made the proof. Before the judgment was entered, Mr. Farnham had ceased to be the city attorney.

Q. Upon what system does the city of Dunkirk do its work? Is he employed specifically? A. The city attorney, do you mean?

Q. Yes. A. The common council passes a resolution designating a city attorney; then, as anything comes up which the common council desire the services of a city attorney in, he is designated or called in on each occasion. He takes no action and has nothing to do with them except as he is called upon by the common council.

Q. In other words, he does not act as the general legal advisor of the city, but only with such matters as he is requested to act? A. What you mean, I suppose, Mr. Stanchfield, is that he did not voluntarily do anything?

Q. That is right. A. That is my understanding of it. I was city attorney myself for six years. That was true in my time and I assume it to be now.

Q. Was he paid his salary or paid upon the theory of payment for what he did? A. I think there was a little something about \$50 or \$75 as I recall it in the way of a retainer, called a retainer, I think it was, and that was all, and then he was paid for each definite piece of work which he did.

Q. Was that true at this time? A. It was.

Q. When Mr. Farnham was the city attorney? A. It was.

Q. Now, are you knowing to the fact that Mr. Farnham asked the mayor and the common council of the city of Dunkirk whether or not they desired to defend this suit? A. I know that one or two, at any rate, of the councilmen, said to Mr. Farnham that they would not defend it; that it was the wish of the people of the city that a judgment be entered in this case, and that it be determined substantially along the line of the resolution previously passed by the council; that that was the wish of the people. I also know this, on the day before, I think it was, we went to Buffalo to make proof before Justice White, Mr. Farnham, in my presence, called up Mayor Scannell over the telephone

and said to him that we proposed to go to Buffalo to make proof in this case for the purpose of taking a judgment substantially, I think, as provided in the previous resolution of the council, and that if he had any wishes in the matter that he, Mr. Farnham, would like to know about it, and that he would also like to go to Buffalo himself if he would, with his attorney, or with anybody, to be present there when the proof was made, if he desired to do so. In fact, Mr. Farnham very fully and definitely stated all there was about it.

Q. You recall that Justice White says that Mayor Scannell was there, in his evidence? A. I don't think—it is not my recollection that Mayor Scannell was there that day at all. If he was, it has passed completely out of my mind. It may be so.

Q. Now after this proof was taken was this judgment prepared in your office? A. After the proof was taken, after I was sworn, Mr. Farnham prepared the conclusions of law; I think he commenced it in my presence; I am not entirely certain as to whether I was present when the conclusions of law were signed by Justice White; I know I was not present when the judgment was signed.

THE WITNESS: A little before that, Mr. Stanchfield, upon going into the City and County Hall in Buffalo I stated to Justice White that this was the case which, as I understood, Judge Hooker had spoken to him about, and that was all the talk that I had with Justice White upon that occasion at all. Mr. Larkins then stated that this was the same case that had come before him previously upon the return of an order to show cause, and that they had had some consultation about it, I think, in Judge White's chambers or in some side room with reference to an adjustment of the matter, and Mr. Larkins started to tell him what the pleadings contained, and I think Justice White stopped him and said that he understood very well what was contained in the pleadings. Then it was that Mr. Farnham stated to Justice White that the city of Dunkirk, the mayor and the common council had not appeared in the action and were in

default, and that as he understood from the members of the common council and Mr. Scannell, the mayor—and I think he stated that he had communicated with them on two or three occasions and advised them of what their rights were if they wanted to defend—that they had not defended, and he had not been directed to take any steps in the matter. He also stated to Justice White that he was there in place of Mr. Warren, the attorney of record, because he could not be there, as he was obliged to be in Albany; and he also stated to Justice White that what the defendants Stearns and Hooker in the case wanted was substantially a judgment along the lines of the resolution of the common council and that that was what the common council wanted, or the greater portion of it; and I think he also mentioned with reference to what the people of the city wanted. So that Justice White was fully advised in regard to it. Let me say here, Mr. Stanchfield, my attention has in the last few months been called to it, not on that occasion or at any time, was section 521—I think I am correct in that number of the section—ever mentioned.

Q. I was going to ask you about that? A. It was not mentioned to Justice White, was not talked about by Mr. Farnham, Mr. Larkin or myself or Justice White, and I don't think it was ever thought of by anybody; certainly so far as I was concerned it was as completely out of my mind as if it had never been written. I may say here that I have not been practicing law for two or three years to amount to anything, and the number—

Q. I don't think you need to apologize to lawyers about not knowing every section of the Code? A. Well, this question has come up and I desire to make that statement in regard to it.

Q. As a matter of fact, no lawyer upon either side, Judge White or any one else, ever thought of section 521 at this time? A. I never heard it mentioned and I never thought of it and I don't believe anybody else ever did. And I may say here, Mr. Stanchfield, that I think every man, Justice White and everybody else

concerned with that matter, acted in the utmost good faith in regard to it.

Q. Now when was this judgment entered? A. Why, I came to Albany the same night that the proof was made. I came back home to Dunkirk and had a communication from our Department here asking me to come to Albany on some important matters, and I think I left that night at midnight and came to Albany and was here two or three days and returned, I think, on Friday, and after getting home, either Friday or Saturday, I think Mr. Farnham advised me that the judgment was entered.

Q. Came there a time afterwards when your attention was brought to the fact that Mr. Justice White desired the vacation of that judgment? A. Yes.

Q. When was that? A. Why, I should say it was something like a year ago; some time a year ago this summer. I wouldn't attempt to say when.

Q. And how was your attention called to it—by whom? A. I think, I am not positive whether I heard of it before, but I think the first time I heard of it Mr. Towne, one of my present law partners, spoke to me about it.

Q. What did he say? A. He said that Justice White had communicated with him in some way, that he didn't know but what possibly the judgment he had granted in this case, that there was something irregular about it, or something improper about it, and asking me if I would stipulate to vacate it.

Q. Now, after that request of Justice White was brought to your attention, did you call up Judge Hooker or see him? A. My recollection about that is that I did on one occasion call Judge Hooker up and say to him that Mr. Towne had spoken to me about it, and whatever he was desirous of doing—or rather, if he wished to stipulate to set it aside, I was perfectly willing.

Q. What did Justice Hooker say? A. I can't recall what reply he made to it.

Q. At any event you signed it and then sent it over to him to sign. A. No, I think it was signed by me—I wasn't present, but my understanding is that Mr. Towne sometime afterwards saw

Judge Hooker in regard to it and had a talk with him in regard to it, and that Justice Hooker signed it; afterwards it came to me and I signed it after he did.

Q. Now, in your testimony, have you related all connection that Justice Hooker had with this litigation from its start to its close?

A. So far as I recall I have stated everything that he had to do with it.

Q. The entire case was under your charge and in the hands of your office? A. Why, the entire case, yes, was in—I looked after it, and Mr. Warren and Mr. Farnham looked after it as the attorneys in the matter.

Q. Was there ever any conspiracy or connivance or improper understanding between you and Justice Hooker that this illegal and void judgment should be obtained against the city of Dunkirk?

MR. COMAN: I—

A. There was—

MR. COMAN: —object to it as incompetent and immaterial.

THE PRESIDENT: Objection sustained.

MR. STANCHFIELD: Well, Mr. President, the charge, if you will pardon me for a moment—I don't know whether I am in order or not—I would like to be heard upon that for a moment.

THE PRESIDENT: I will hear you.

MR. STANCHFIELD: The charge is to this effect—

MR. COMAN: Mr. President, I withdraw the objection.

THE PRESIDENT: Objection withdrawn.

MR. STANCHFIELD: Read the question please.

(Question read by the stenographer.)

THE WITNESS: There was not, and I wish now to characterize that charge as absolutely untrue.

Q. Did you intend in what you had to do with this case to obtain any unfair advantage over the city of Dunkirk? A. I did not.

Q. Mr. Stearns, you testify here that when you went to Buffalo to Mr. Justice White, Justice White stated "This is the case that Justice Hooker spoke to me about?" A. No, I didn't testify to that, or, if I did, I did not so intend.

Q. Well, now, did you ever have any talk with Justice Hooker in reference to this case aside from the one occasion that you spoke of when he was at your office soon after the summons and complaint was served? A. Aside from the time when he was personally in my office and the time when I called his attention to the fact that Mr. Wirtner didn't desire to go on with the case, I had no communication of any character with him until long after the entry of this judgment.

Q. Well, when you called up Judge Hooker with reference to going to Buffalo, you gave him as a reason for wanting Judge White that he was familiar with the facts? A. That was one of the statements I made to him.

Q. Do you recall whether Judge Hooker ever informed you—  
A. (interrupting) Oh, he did, I will change that in this respect; I can't tell you the date, but at some time he called me up from Buffalo and said that he had spoken to Justice White and he would hear the case, and that was all. I didn't recall that; I wish to correct my testimony in that respect.

MR. STANCHFIELD: You may cross-examine.

MR. ROGERS: Mr. President, when I interposed the objection to the camera in the room, I supposed it was the irrepressible fiend who had stealthily come in. I am since advised that it was a representative of a newspaper, and that the Chair had granted permission for him to come in before. I desire to say, however, for my own part I regard it as undignified that such a thing should occur; I have never seen it occur in any judicial tribunal, but if it is the sense of the House or the Chair that it should be permitted, I don't care to interpose my personal objection.

MR. RAINES: The objection is renewed.

THE PRESIDENT: The Chair should state no permission was asked of the Chair; it simply was stated to him that there was a



photographer in the room; the Chair did not feel called upon to remove him unless objection was made. You may proceed.

CROSS-EXAMINATION by MR. COMAN:

Q. Mr. Stearns, when did it first occur to you that you could get an affirmative judgment in this action against the city of Dunkirk? A. I don't know that it ever occurred to me until we got it.

Q. You knew, did you not, that you had asked for no judgment against the city of Dunkirk in your answer in this case? A. Oh, I knew what was contained in the prayer for relief, yes, sir.

Q. You knew that, did you not, that you had asked for no affirmative judgment against the city of Dunkirk? A. Oh, I think that is true, yes.

Q. You also knew that your answer had never been served on the city of Dunkirk or any representative of that city? A. I don't think it was; it was not by me and I have no knowledge that it was.

Q. You never heard it suggested that it had been, did you? A. No, nor that it should be.

Q. Nor that it should be. You say that you were ignorant of the existence of section 521 of the Code of Civil Procedure? A. I don't say that Mr. Coman.

Q. You say that you didn't recall it? A. I did not it was absolutely out of my mind at the time.

Q. You were not ignorant as a lawyer, Mr. Stearns, of the principle that a judgment cannot be obtained against a party in any court without either actual or constructive notice of some kind to that party, were you—a valid judgment? A. Why there are many instances, Mr. Coman, as I understand it, where judgments can be obtained upon default of defendants without any notice whatever upon them.

Q. Without notice sir, that a judgment is asked for against them? A. Why I assume that a judgment shall be asked for.

Q. And notice given to them that a judgment is asked for? A. Well, a judgment was asked for in this case.

Q. Against whom? A. That the complaint as I recall it be dismissed and that these defendants have such other and further relief as might be proper.

Q. Did you understand, sir, that under that general prayer for relief you were entitled to a judgment against a co-defendant in this action? A. Mr. Coman, I didn't have any thought about it; I was——

Q. (interrupting) Did you—— A. (interrupting) If you will permit me.

Q. Yes, sir, proceed if you have not completed your answer. A. I was in this position. There is an old saying that a lawyer who takes care of his own case has a fool for a client and I had employed attorneys in this case and I didn't pay very much attention to it. That is the truth of it.

Q. Well, after this suit was commenced, you say you called Judge Hooker up and asked him to come over and talk with you about it? A. I did.

Q. And he came? A. He did, some time afterwards; within a day or two.

Q. What conversation did you and Judge Hooker have about this suit? A. The conversation that was had was with Judge Hooker, Mr. Warren and myself. I think it was talked over in reference to the assurances that I had previously had from members of the common council that at any rate while they were members that nothing should be done to injure the property which was put up there at a large cost and which was an ornament to the city's property.

Q. Was it talked that this fact should be recited in your answer? A. I don't think as to what should be stated in the answer was stated by anybody.

Q. What were you talking about then? A. We were talking about all of the facts concerning the putting up of the building.

Q. But that was the purpose, that is what you were talking about these facts for, for the purpose of considering what your answer should contain? A. That was one of the purposes at any rate.

Q. Now, can you think of anything else that was said about this action either by Judge Hooker or in his presence there? A. I would not attempt to recall it unless you call my attention to it.

Q. No, I can't because I wasn't there. A. No, I very well understand that, Mr. Coman.

Q. Have you now told everything you remember that was said by Judge Hooker or in his presence about this case? A. I think this was said, that the property was put up at a large expense, the entire south side of it was made a very much greater expense than it would have been if it had not been made to be ornamental, to make an ornament of the property next to the city hall park.

Q. Did you and Judge Hooker consider the question as to whether there were any grounds upon which you could prevent the city of Dunkirk from putting a building up there—any legal grounds? A. I think there was some talk about it, I am not certain about it, Mr. Coman.

Q. You think there was some talk about it? A. I think so.

Q. Do you remember anything that Judge Hooker said upon that point? A. As a matter of fact, Mr. Coman, Judge Hooker didn't have much to say about it.

Q. That is hardly an answer to my question, Mr. Stearns. A. I don't recall he said anything about it.

Q. But you do recall that subject was under discussion? A. What subject?

Q. That I have just mentioned, sir, with reference to whether or not there were any legal grounds upon which you could prevent the city of Dunkirk— A. (Interrupting.) Oh, yes, I think there was some talk about it.

Q. Was there any conclusion reached upon that point? A. My understanding of it is after it was all talked over I know Mr. Warren said he would think this thing over and prepare an answer and he did so, and I read it over the following Monday and verified it and he took it.

Q. Now, how soon after—first let me ask you who served the answer, if you remember, on Larkins? A. My understanding of

it is it was served in Buffalo on the return of the motion; on that day. I was not present there and I can't state.

Q. How long after you had verified this answer before you had this conversation with Larkins you have narrated. A. It was after the time of the motion in Buffalo; oh, I should say within a week, but I am not certain.

Q. Did Mr. Larkin come to see you or did you go to see him? A. Neither, I met him on the street.

Q. Now, who first spoke of the litigation here, you or Mr. Larkins? A. I won't be certain about it, Mr. Coman.

Q. Well, at all events, Larkin said to you the plaintiff had decided to go no further with the action? A. That in substance.

Q. Then did you say to him to give you a stipulation of discontinuance? A. I don't think stipulation of discontinuance was mentioned.

Q. Why not? A. I don't know.

Q. All that you could possibly accomplish legally in this action would be a discontinuance of the action, wouldn't it? A. I don't know, I didn't consider that at that time.

Q. Well, you were considering at that time going before some judge, weren't you, and giving evidence in this action? A. Until the talk with Mr. Larkin I had supposed, of course, that Mr. Wirtner proposed litigating his action.

Q. And then you were informed he did not? A. Yes.

Q. Now, just what did Larkin say to you? A. I have told you the substance of it.

Q. Will you please repeat that once more, Mr. Stearns? A. He stated in substance, then, that Mr. Wirtner didn't care—I don't know he mentioned Mr. Wirtner, but the plaintiff or Wirtner, didn't care to do anything further with his case and suggested we go before some court, I think, and make the proof in the case along the lines indicated in the resolution of the common council. I am not certain, although I think Mr. Larkin stated he was satisfied that was what the people of the city of Dunkirk wanted which was true if he did and I think he did.

Q. Now, Mr. Stearns, as a lawyer, why didn't you ask Larkins to give you a stipulation of discontinuance of this action? A. I never thought anything about a stipulation of discontinuance. I didn't pay very much attention to it, Mr. Coman, that is the truth of it.

Q. You knew as between you and Wirtner that was all the relief you could possibly obtain in this action? A. I didn't consider that proposition at that time at all.

Q. Have you ever considered it? A. Since the question of section 521, if I recall the section correctly, that is the one at any rate for the service of an answer upon a co-defendant, was called to my attention, I think some time here last winter, I have given it some consideration and some examination.

Q. You gave this case some consideration and some examination before you went to Buffalo to give your evidence, didn't you? A. Well, what do you mean about that?

(Question repeated.)

A. You mean legal examination?

Q. Yes. A. Not a particle.

Q. Did you give the legal questions involved any consideration? A. None whatever, I had somebody to do that.

Q. Did you go to Buffalo with the intention and design of securing a judgment in this action against the city of Dunkirk? A. I did not, I went to Buffalo for the purpose of presenting the facts to the Court and taking such judgment as the Court thought we were entitled to.

Q. But what judgment you were entitled to you never considered? A. I did not.

Q. You assisted, at least, did you not, in the preparation of the findings of fact? A. My best recollection of that is, Mr. Coman, that I was not there, but I will not state that to a certainty.

Q. Did you not state upon your direct examination that your best recollection was you were there at least a portion of the time? A. It may be I was there a short time. At any rate the question came up of preparing findings of fact on that occasion, and it was talked about as to the relief on that occasion.

Q. Between whom? A. Between Mr. Warren and myself.

Q. What was that talk? A. The talk was the relief would depend upon the facts presented to the Court when it got into Court.

Q. You knew what facts had been averred, pleaded and set up in your answer? A. The facts have been set forth.

Q. And you expected to conform your proof to the allegations in your pleadings, didn't you? A. I expected to prove substantially what was contained in the answer, along those lines, that is, if I expected anything about it; as a matter of fact I didn't pay any attention to it.

Q. Did you to any extent assist or participate in the preparation of the conclusions of law? A. I stated that before, that I might have been present, I think perhaps I was during part of the time when Mr. Warren—I should say Farnham—was preparing the conclusions of law and possibly made some suggestions, I am not certain about it.

Q. You are familiar with these conclusions of law, are you not? A. I haven't read them recently.

Q. Well, how recently? A. Well, it has been some time, I wouldn't undertake to say how long.

Q. You are sufficiently familiar with them, are you not, to know that the reading of even a very small portion of them would indicate that an affirmative judgment was to be taken against the city of Dunkirk? A. I should think so, yes.

Q. You knew before these findings were signed and before this judgment was entered, did you not, that Justice White was to be asked to enter a judgment against the city of Dunkirk restraining the city from building upon its own property? A. I assumed that Justice White would be asked to find from this evidence, make some conclusions of law, and would be asked to grant a judgment of some character.

Q. Against whom? A. I won't try to assume it was against anybody. As a matter of fact I did not bother my head with it.

Q. Before going to Buffalo you called up Judge Hooker at Buffalo, did you? A. He called me up, yes, sir, from Buffalo at some time.

Q. Prior to that you called Judge Hooker up and asked him to talk with some judge, didn't you? A. I called Judge Hooker up after my conversation with Mr. Larkin, when he informed me Wirtner didn't propose to go any further with the case.

Q. What did you say to Judge Hooker? A. In substance that Mr. Larkin had suggested the plaintiff did not propose to go any further with the action, and I asked him to see some judge in Buffalo, and asked him if he would take the proof and give us such judgment in the case as was proper.

Q. Only a few days before that you had talked with Judge Hooker about the facts in this case and you had considered then the question whether you could legally obtain an injunction restraining the city of Dunkirk from building on this property? A. I won't say that.

Q. You have already said that. A. It was only a few days before Judge Hooker was present in the office and all the facts concerning it were talked over.

Q. And you considered then as to whether or not you could legally obtain a judgment against the city of Dunkirk restraining them from building on this property, did you not? A. I don't believe that was talked about.

Q. Haven't you testified within five minutes here it was talked about? A. I don't think so; we talked about the facts in the case.

Q. What did Judge Hooker say when you suggested to him that some judge should be gone before and this action tried. A. I asked him to see some judge, I suggested that perhaps as Judge White had heard the motion it would be a good idea to see him.

Q. What did Judge Hooker say? A. He said he would let me know.

Q. Anything else? A. Nothing whatever, absolutely nothing else.

Q. Or that a stipulation of discontinuance was necessary?  
A. That subject was not talked about and nothing else except what I have told you.

Q. You have stated on your direct examination at one or two places in your examination, that it was said that the city did not care to defend this action? A. Yes, sir.

Q. What would the effect be if the city did not defend? A. I don't know what the effect would be or was.

Q. You do know what the effect is if a defendant does not defend an action, don't you? A. Yes.

Q. You know what the effect of the city not defending this action would be, that the plaintiff would secure a judgment restraining the execution of this lease? A. I don't care to discuss that. There might be various kinds of relief granted in that kind of an action.

Q. As to what this taxpayer and the city of Dunkirk against their property could various kinds of relief be granted? A. Yes, I think there might.

Q. For instance, what? A. If it had continued to a litigation—you mean from a legal standpoint?

Q. Yes. A. What could have been granted I couldn't say, I am not going to speculate.

Q. Well, you went to Buffalo, Mr. Stearns? A. Oh, yes.

Q. And you were sworn as a witness before Judge White? A. I was.

Q. Did Judge White hear your evidence? A. Heard some of it at any rate; I don't know whether he heard all of it or not.

Q. What would be your best recollection about that? A. I wouldn't care to testify about that. I am not certain; I think he stepped out of the room; I think perhaps he was out part of the time.

Q. Do you remember in substance what you testified to on that examination? A. I think I can recall some of it.

Q. Almost the whole of your testimony related, did it not, to conversations which you had had with various individual mem-



bers of the common council of the city of Dunkirk prior to the erection of this building? A. That was part of it, at any rate.

Q. That was the bulk, the main part of your evidence? A. I don't know, you have the testimony; you will have to make your own decision as to that.

Q. And also concerning conversations between those individual members of the common council and Judge Hooker on the same subject; you testified to that, didn't you? A. I think if I recollect, that I testified that my understanding was that Judge Hooker had had some talk with some common councilmen about it.

Q. You testified to your knowledge upon that subject, didn't you? That you and he together had had talks with them? A. Well, do you mean when he and I were together?

Q. Yes, sir. A. I don't think so, Mr. Coman. If so——

Q. And it was upon that evidence that you asked a justice of the Supreme Court to grant a judgment restraining the city of Dunkirk from building upon this property? A. I did not ask a justice of the Supreme Court for anything.

Q. You presented these findings of facts and conclusions of law to Judge White, didn't you? A. I did not.

Q. You directed your attorney to present them, didn't you? A. I did not.

Q. What did you do? A. I was sworn as a witness in that case. There were some exhibits given there, I think, with reference to the title and there were some resolutions of the common council, and when that was done Mr. Farnham prepared the conclusions of law. I think I was present during part of the time, and possibly during all of the time; I am not clear as to that.

Q. Your relation to this case was that of a witness? A. I was a party defendant and a witness.

Q. Were you seeking to accomplish anything in this case? A. I was seeking to accomplish whatever the court thought we were entitled to have after he had heard the facts.

Q. Do you know of your knowledge whether the court ever saw or did not see these findings of fact and conclusions of law? A. I don't.

Q. He never did to your knowledge, did he? A. I cannot say whether he did or not, either way.

Q. Did you say to Justice White in substance that the parties to this action had substantially agreed upon what was to be done? A. I did not.

Q. Was that said to him by any one in your presence? A. I don't think it was.

Q. Is that as strong as you wish to put it? A. I don't recollect it.

Q. Is that all you care to say about it? A. I won't say positively, Mr. Coman, only what I definitely remember and understand. I know this was stated to Justice White, that the city of Dunkirk was in default and did not care to litigate, and Mr. Farnham distinctly stated that Mayor Scannell's attention had been called to it the day before and the common council's attention had been called to it, and I think he stated that he had written to Justice White about it.

Q. Was not the fact that the city of Dunkirk was in default notice to you as a lawyer that you had no right to take a judgment against them? A. I did not pay any attention to that, Mr. Coman.

Q. When was the judgment prepared, Mr. Stearns? A. I can only tell you what I believe to be the fact. I believe that the judgment was prepared on the same afternoon, after Mr. Farnham and Mr. Larkins and myself had gone to luncheon and that he went back——

Q. At Buffalo or Dunkirk? A. I think at Buffalo.

Q. And did you look it over? A. I did not.

Q. Or read it? A. I did not.

Q. Have you ever done so? A. Yes.

Q. When? A. When this investigation was going on before the committee here last winter or spring I think my attention was

called to it, and then I read it over; and that, Mr. Coman, was the first time I ever did read it.

Q. That was during the progress of the investigation before the judiciary committee? A. Yes, sir.

Q. Did not you read it when Judge White asked you to sign a stipulation vacating it? A. I did not. Judge White never asked me to sign any stipulation.

Q. What was there about that? A. I told—I will tell you again—Mr. Towne spoke to me about it.

Q. Did you read it when Mr. Towne asked you to sign the stipulation? A. I did not.

Q. Why didn't you read it? A. I will tell you what I said to Mr. Towne.

Q. Did you take steps to inform yourself of its contents and provisions? A. When was it, what is the date of it, Mr. Coman?

Q. The date of the judgment? A. No, the date of the stipulation.

MR. CARR: November 2nd, 1904.

THE WITNESS: What is it?

MR. CARR: November 2nd, 1904.

MR. STANCHFIELD: Last November.

THE WITNESS: I am very certain I did not read any of the papers, Mr. Coman.

Q. You didn't have to, did you? A. No, I didn't, you knew what was in them.

Q. And the substance of them, didn't you? A. I didn't; I didn't stop to think what was in them.

Q. Haven't you been advised during all that period of time, Mr. Stearns, as to what the substance and effect of this judgment was, based upon your evidence in an action in which you were a party? A. I assumed that the judgment, without looking at it, provided that the city of Dunkirk should not place any erection

on that park property until such time as it became necessary to use it properly.

Q. And you assumed that all the time, didn't you, from the day you testified before Justice White? A. I didn't assume anything; it passed out of my mind.

Q. When did you first commence to assume that was the fact? A. What?

Q. What you have just stated? A. The findings of fact a part of which I heard dictated by Mr. Farnham, or perhaps all of it, I wouldn't undertake to say, indicated that.

Q. And that was before the judgment was entered? A. Yes, sir; certainly.

Q. Before you signed this stipulation didn't you ask your attorney what sort of a judgment he had procured for you? A. I did not.

Q. After the entry of the judgment and after Mr. Towne had come to see you, do I understand you that you had a talk with Judge Hooker about this stipulation? A. After Mr. Towne came to see me, I think I called Judge Hooker up about it and told him.

Q. Can you fix that date, Mr. Stearns? A. I cannot.

Q. Approximately? A. No, I wouldn't undertake to do that. I really do not know when Mr. Towne spoke to me about it, Mr. Coman.

Q. Did you at any time talk with the plaintiff in this action prior to the entry of this judgment? A. I did not. For a long time, Mr. Coman, I had only just barely spoke to him when I met him, and that was true for some time afterwards.

Q. Who paid the expenses of this litigation? A. Well, what do you mean by that?

Q. Well, what do you mean by it? Mr. Stearns, I mean who paid the expenses of this litigation? A. The going to Buffalo on the day in question I think I bought the tickets, the railroad tickets for Mr. Farnham and myself. Whether Mr.—whether I bought the ticket for Mr. Larkins or not I don't know, and I am

not entirely certain that he went on the same road. I think he went on the Pennsylvania; we went on the Lake Shore. I also took both of those gentlemen to the Iroquois Hotel to lunch.

Q. Do you know who paid Mr. Larkins for his services in this action? A. I do not.

Q. You did not? A. I did not.

Q. Nor authorized anyone else to do it? A. No, I did not.

Q. You weren't present when the motion came up for a continuance of the injunction, Mr. Stearns, before Judge White? A. No, I was not.

Q. And, of course, you don't know what took place there? A. I do not, only as I was informed about it afterwards.

Q. I mean as to what the extent of this discussion was or anything of that kind? A. No. As to the facts of that, Mr. Coman, I haven't any knowledge at all except hearsay.

Q. And as to whether Justice White at that time read or examined the pleadings you have no knowledge? A. Only what I heard that he did, that is all.

Q. You have no knowledge, of course. A. Positively myself, no; I couldn't have had; I wasn't there.

Q. Did you object when you were asked to stipulate that this judgment be set aside? A. I did not.

Q. Why not? A. I said to Mr. Towne that if Judge White—that was sometime previously—I think this matter had been published in some Jamestown paper in regard to it—I said to Mr. Towne that it was a matter that I cared very little about. In the first place I cared so little about it that I even requested, or communicated with, the common council and said to them that they needn't go on with the resolution, Mr. Coman. That is the truth of it, and the reason of that was—

Q. Just a moment right there. After you had made that communication through the common council, you went right on and procured this judgment, didn't you? A. After the communication was made, but perhaps—

Q. Wait a minute. Will you please answer that question? After you had made that communication to the common council

you procured this judgment? A. After that communication to the common council this judgment was entered.

MR. ROGERS: May I interrupt? Was that a written or a verbal communication?

THE WITNESS: My recollection is that it was by a short letter. I am not positive, but I think probably the letters of Dunkirk would show what that was; I didn't care anything about it and they needn't go ahead, and if it only came up to Judge White's wishes in the matter, I said to Mr. Towne, I was perfectly willing to cancel the judgment any time, and was. I didn't then and I don't now, as far as that is concerned, think that in fifty years anybody will put up a building on that property against ours or that there will be any reason to do it.

By MR. COMAN:

Q. You are not answering me, are you, Mr. Stearns?

MR. STANCHFIELD: He is answering a lot of suppositious questions by you.

MR. ROGERS: Will the counsel ascertain of Mr. Stearns whether there was such a letter.

THE WITNESS: I will ascertain, Mr. Coman, when I get home if there was such a thing there, if that will answer your purpose, and be very glad to do it.

MR. COMAN: That is all, I think.

RE-DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Mr. Stearns, I do not recall whether or not I asked you in reference to the matter, but was there any collusion or understanding between you and the plaintiff Wirtner, with reference to his institution of these proceedings? A. Absolutely none whatever. I had scarcely spoken to him when I met him, and the feeling had been the same with his attorney, and it was all on account of politics, Mr. Stanchfield.

Q. After this judgment was obtained against the city of Dunkirk, was anything ever done under it by you or any one else, under or by virtue of the judgment? A. What do you mean?

Q. With reference to obtaining any right or taking any steps under it? A. Not the slightest to my knowledge.

MR. STANCHFIELD: That is all.

RE-CROSS EXAMINATION by MR. COMAN:

Q. Just a word, Mr. Stearns, I call your attention to the following provision in the judgment, page 352: "Such parks or portions of the same shall be so utilized from time to time as will the least interfere with the enjoyment of said premises of the defendants Stearns and Hooker, on the north side thereof, or to work an injury thereto, or in the diminution in the value thereof," and to this portion particularly, "and that in no event will the southwest corner thereof, being that portion now bounded on the east by the city hall, and upon the north by the stone walk running at right angles to Central avenue, from the Central avenue entrance to the street, be utilized until finally necessary," where is the portion of the city hall property last described there with reference to your property? A. Do you mean the southwest corner?

Q. Yes. A. It is the corner still further south of our property, and the corner, the actual corner in question, I should think would be 120 feet away from our property, and that is the corner, Mr. Coman, if you care to have me describe it. Our building—we will say this is the street (illustrating) north and south, our building continues back to the east, and the city hall standing further back on the city property makes an open space of, I should think, I wouldn't be certain, but I should think 100 feet; an open space in front of the city hall on this part south from the corner is the actual corner of the park and the corner where the fountain is.

Q. And clear across the park from your building, on the opposite side of the park? A. Yes.

MR. CAHN: To witness.

Q. I would like to ask the witness whether at the time his case was being heard in Erie county before Judge White, whether there was not a term of the court in Chautauqua county? A. I think there was.

Q. Do you recall who was sitting at the time? A. I was not there, but I have since ascertained that there was a term of court in Chautauqua county beginning as I recollect it on the 28th of January, which was the day before this hearing before Justice White, but in that court Justice Hooker presided, one of the defendants in this case.

Q. Does not the record show, Mr. Witness, that Justice Kruse was presiding in the Chautauqua term? A. I don't think so. I haven't personally—I telephoned to the clerk's office and asked the clerk about it the other day because the question came up; personally I don't know from examination; all I know is what the clerk told me.

Q. The evidence at page 415 shows that a special term for a trial of issues of fact during 1902, on the 20th of January, was to have been held by Judge Kruse? A. I don't know anything about it.

Q. Do you intend to swear—— A. I don't know anything about what that record is or who testified to it.

Q. Do you testify of your own knowledge that Judge Hooker was holding that term? A. I do not, because I wasn't there. All I know about it is that I have some recollection that he did hold the January term of court. It is an indistinct recollection, and to be certain about it, I called up the county clerk's office to find out what there was about it and asked them about it, and asked them to look at their court records, whoever answered me, and was advised by somebody in the office that Judge Hooker held that term in January. That is all I know.

MR. ROGERS: Can't Mr. Stevens inform you who held that term of court actually?



MR. STEVENS: I do not recall Mr. Rogers, but it is my understanding that Judge Hooker did hold it on that day. It was assigned to Judge Kruse, and at some time in the week preceding the change was made; that is my understanding of it; and Judge Hooker came up and held the court.

THE PRESIDENT: The Chair desires to state to the joint assembly that Mr. Wardman is here, and it is after four o'clock, in response to the request of the joint assembly.

MR. IRVING WARDMAN, recalled.

MR. WADE to witness:

Q. Mr. Wardman, since you were on the witness stand this forenoon have you talked with Mr. Hennessy by telephone? A. I have.

Q. And have you ascertained from him who was the author of this article? A. I have not.

Q. Have you ascertained whether or not he knows? A. I have not. He declined to state who it was that wrote it; I presume that he knows.

Q. Speak a little louder. A. He declined to state who wrote the articles.

Q. You asked him who wrote them? A. I asked him who wrote them.

Q. And he declined to state? A. He declined to state.

Q. Now, Mr. Wardman, will you give the names of the persons connected with this newspaper who write articles for it in the city of New York? A. The names?

Q. Yes, sir. A. I couldn't do it; there are a good many of them.

Q. Well, give the names that you recall. A. Mr. Bullock."

Q. Give the first name, please? A. J. J., I think.

Q. Where does he reside? A. He resides in New York. He is in London at present.

Q. Is in London? A. Yes.

Q. Well, when did he go to London? A. Perhaps six weeks ago.

Q. Well, it is pretty safe to assume that he didn't write this article? A. Yes, I think so.

Q. Now, go on with these names. A. Why, I couldn't run down our pay roll; we have got several hundred people connected with this establishment.

Q. Where is the Albany correspondent now? A. I don't know.

Q. When did you last see him? A. Perhaps two weeks ago; I couldn't say.

Q. And his name you gave this forenoon; it has escaped me. A. Mr. Relihan.

Q. Is he now in North Dakota? A. I do not know.

Q. Have you learned that he was? A. I have not.

Q. Or been informed that he was? A. I have not.

Q. Are you able to state, Mr. Wardman, whether or not Mr. Relihan has been in the city of Albany since this joint session convened on the 10th of July? A. I am not.

Q. Have you any information whatever? A. I have not.

Q. (continuing) That he has been within the State of New York since this joint assembly convened on the 10th of July? A. I have not.

Q. Have you taken any pains to ascertain? A. I have not.

Q. His assistant's name is what? A. Mr. Cuyler.

Q. What is his first name? A. E. C., I think.

Q. Is he here now? A. I don't know.

Q. Do you know where he is? A. I presume he is in Albany.

Q. Have you seen him here to-day? A. I may have seen him; I don't know him when I see him.

Q. Don't know him when you see him? A. No.

Q. Is Mr. Cuyler in the room? Will you stand up? (Mr. Cuyler arose.)

MR. WADE to witness:

Q. Is that the gentleman you refer to? A. I don't know; if it is Mr. Cuyler, it is.

Q. Now give the names of some more of the people connected with your paper who write articles for publication in it. A. You want me to run down the list? Mr. Garrison, J. C. Garrison; Mr. James O'Keefe; Mr. Marcin.

Q. What is his first name? A. I don't know. Mr. Stoddard, A. M. Stoddard; Mr. Richard Spillane. None of those wrote that article; that I am sure, because they don't do that kind of work.

Q. Please repeat that Mr. Wardman. A. I am sure that none of them wrote that article because they don't write that kind of articles.

Q. Well give me the name of one fellow that does write that kind of articles, will you, if you have got one? A. Well, Mr. Relihan writes that kind of articles.

Q. Well he is where he couldn't have written this one. A. Mr. Cuyler writes that kind of articles.

Q. Will you step aside just one moment, Mr. Wardman? Mr. Cuyler will you take the stand?

E. C. CUYLER, called as a witness, being duly sworn, testified:

MR. WADE to witness:

Q. Mr. Cuyler where do you reside? A. In Albany.

Q. And are you a correspondent of the New York Press? A. I am.

Q. And have been in attendance at this extra session of the legislature in that capacity? A. No, sir.

Q. Or any part of it? A. No, sir.

Q. Have you written any article for the New York Press in connection with this investigation or trial? A. None.

Q. How? A. None.

Q. Do you know who wrote it, Mr. Cuyler? A. I do not.

Q. And have no information upon the subject? A. None.

Q. Who is the regular correspondent here of the New York Press? A. I presume you mean the regular legislative correspondent?

Q. Well, I can't define the terms that the paper has used here; they say this is from their regular correspondent and I want to know who that is? A. Well, I am the regular resident correspondent.

Q. Do you know of any other correspondent of the New York Press that has been here during this extra session? A. Not of my own knowledge, no; I understood Mr. Relihan had been here, but I haven't seen him and I don't know.

Q. You know him when you do see him? A. Oh, yes.

Q. Did you understand that he had been here during this session since July 10th? A. Well, I couldn't say that I had; I thought I had seen him on the streets during the session, but I am not positive that I did.

Q. This week? A. No, I think last week.

Q. The session wasn't here last week. A. Well, the first week of the session.

Q. Now, Mr. Cuyler, have you any information of any kind or character that Mr. Relihan has been here during the present week? A. None.

Q. Eliminating Mr. Relihan, do you know of any other person that has acted or assumed to act as a correspondent of the New York Press? A. I do not.

Q. Did you on any occasion since the convening of the Legislature, July 10, send any communication to the New York Press written, by telegraph or by telephone? A. I think undoubtedly I did.

Q. When? A. I couldn't tell you as to the dates.

Q. Well, this week? A. Let's see—this is Wednesday; I may have bulletined them some.

Q. May have what? A. I may have sent them bulletins of some news matters.

Q. How did you send them? A. By telegram.

Q. What telegraph company transmitted that message? A. A. Well, if there were any such, it would be the Postal.

Q. You sent nothing by the Western Union? A. None.

Q. Did you send any information, Mr. Cuyler, justifying the statement that is contained in this article? A. I sent nothing at all with reference to the Hooker trial; I told you that.

Q. Then you sent nothing that would justify the statements contained in this article? A. I sent nothing at all in reference to the Hooker matter in any shape or form.

Q. Have you, Mr. Cuyler, any way of informing this Legislature of how it may reach the person who wrote this article? A. No.

IRVING WARDMAN, recalled, testified as follows:

EXAMINED by MR. WADE:

Q. Will you repeat the conversation you had with Mr. Hennessy on the telephone which you told before you left the witness stand? A. I said, "Mr. Hennessy, the Legislature has asked me who wrote those articles of the 12th and 13th. I have told them the truth, that I didn't know; the Legislature has then instructed me to instruct you to tell me who wrote them, and to instruct you not to destroy the copy of those articles." Mr. Hennessy said, "Well, I refuse to tell you who wrote them." I said, "I thought you would."

Q. You anticipated that? A. I warned you so; I told you I had no idea he would tell me.

Q. We didn't have much idea he would. A. I didn't suppose you did.

Q. You recognize, don't you, the necessity for keeping that information away from this Legislature, if it is possible to do so?

A. Is that a question?

Q. Yes. Yes or no will answer it. A. I will answer it no.

Q. You don't recognize the necessity? A. No.

Q. Have you a desire to do so? A. I have a desire that the Legislature should get its information from those that know; I don't.

Q. Have you a desire to keep that information from this Legislature, if you can do so? A. As far as I am concerned.

Q. You have, is that correct? A. So far as I am concerned.

Q. And that is your intention? A. No, not necessarily.

Q. I don't care whether necessary or not. A. It is not my intention; I shall answer every question truthfully and honestly.

Q. You have sufficient authority as the vice-president of that company to compel the furnishing of that information? A. I could compel him to furnish it or get off of the paper, but I shall not resort to that.

Q. You think you could compel it? A. I could give him the choice; I should not do it.

Q. You should not do it? A. No.

Q. As a matter of right and justice, Mr. Wardman, do you feel that you are justified in the control of that paper in branding this Legislature as you have in that article, and then denying to the Legislature the sources of your information, or whether or not you have any information on the subject? A. I do not concede we have branded all the Legislature.

Q. Or a part of it—now do you feel that is right between man and man? A. I feel that in view—

Q. (interrupting) Just answer my question? A. I feel it is right to tell what we believe to be the truth always.

Q. You believed it to be well founded? A. We thought it was well founded.

Q. Now, Mr. Wardman, will you do this, will you, if it is within your power to do so, present to this legislature the name of every member of this legislature whom you have been advised has been guilty of the practices that you outline in this article? A. I will not.

Q. You will not? A. No.

Q. Mr. Wardman, do you really believe in your own heart that any member of the Legislature has been bribed or that there has been any attempt to bribe any member of it, in this matter? A. I am afraid, sir, that I do.

Q. You do? A. I am afraid I do.

Q. Name of the member? A. I decline to do it.

Q. Now that belief, Mr. Wardman, is founded upon information that you have received is it not? A. Not specific, no.

Q. What? A. Not specific.

Q. Well, general? A. General, yes.

Q. Now, sir, I want you to name the person whom you believe has attempted that bribery or committed it. A. I decline to do any such thing.

Q. Do you believe that the information you have received justifies your belief in that respect? A. I do.

Q. From what source did you receive this information? A. I decline to say.

Q. You are in no doubt in your own mind as to the source of that information? A. None.

Q. You know from whom it came? A. It did not come to me directly.

Q. You know the circuitous route it journeyed in coming to you, don't you? A. I do.

Q. And the individuals who conveyed it? A. Yes.

Q. What? A. I do.

Q. Now name them. A. I think I have already named the fact—

Q. No, I ask you now to name the men? A. Name our sources of information?

Q. Yes. A. I decline to do that.

MR. WADE: Mr. President, I ask that the witness be directed to answer these various questions he has declined to answer.

THE PRESIDENT: I believe that direction was given to the witness in the session this forenoon. Does the counsel desire it again be given to the witness?

MR. WADE: Mr. President, I desire that the stenographer read each of the questions he has declined to answer, and I shall then ask the chair to ask him to answer each one of them specifically, and I shall then ask that the Legislature in joint session give that direction. Will the stenographer read those questions?

The stenographer read the following questions:

“Q. Now, Mr. Wardman, will you do this, will you, if it is within your power to do so, present to this Legislature the name of every member of this Legislature whom you have been advised has been guilty of the practices that you outline in this article?”

THE PRESIDENT: The question is, shall the witness be directed to answer the question. Those in favor say aye. (Cries of aye.) Those opposed, no. (Cries of no.) The witness is directed to answer the question.

THE WITNESS: I decline to answer the question.

THE PRESIDENT: Read the next question that the witness declined to answer.

The stenographer read the following question:

“Q. Name the member?”

THE PRESIDENT: The question is, shall the witness be directed to answer. Those in favor say aye. (Cries of aye.) Those opposed, no. (Cries of no.) The witness is directed to answer the question.

THE WITNESS: I decline to answer the question.

THE PRESIDENT: Read the next question that the witness declined to answer.

The stenographer read the following question:

“Q. Now, sir, I want you to name the person whom you believe has attempted that bribery or committed it.”

THE PRESIDENT: The question is, shall the witness be directed to answer. Those in favor say aye. (Cries of aye.) Those opposed, no. (Cries of no.) The witness is directed to answer the question.

THE WITNESS: I decline to answer.

THE PRESIDENT: Read the next question that the witness declined to answer.



The stenographer read the following question :

“ Q. From what source did you receive this information ? ”

THE PRESIDENT: The question is, shall the witness be directed to answer. Those in favor say aye. (Cries of aye.) Those opposed, no. (Cries of no.) The witness is directed to answer the question.

The stenographer read the following question :

THE PRESIDENT: Read the next question that the witness declined to answer.

The stenographer read the following question :

“ Q. No, I ask you now to name the men ? A. Name our sources of information ? Q. Yes.”

THE PRESIDENT: The question is, shall the witness be directed to answer. Those in favor say aye. (Cries of aye.) Those opposed, no. (Cries of no.) The witness is directed to answer the question.

THE WITNESS: I decline to answer the question.

THE PRESIDENT: Are there others, Mr. Stenographer ?

THE STENOGRAPHER: That is all.

MR. WADE: Mr. Wardman, can you repeat the exact language Mr. Hennessy used when you told him that you had been instructed by the Legislature to ask him to disclose the author of this article ? A. I refuse to tell you or anybody.

Q. Was that the first talk you had with Mr. Hennessy upon this subject ? A. It certainly was.

Q. Did you ask any one else to communicate with him ? A. I did, when I went out of the hall I telegraphed to my secretary—the telegram will be out there of record—about as follows: “ Get hold of Hennessy at once. Tell him to report immediately to talk with me on telephone.” I confirmed that message over the telephone. I waited at the end of the telephone until he answered, when the conversation took place, of which I told you.

Q. You confirmed that by talking with your secretary over the telephone? A. Confirmed that order.

Q. You talked with him. What did you say to him in reference to it? A. I told him I wanted him to get hold of Mr. Hennessy right away. He said he did not think he could do it because he was in bed. I said, "Get hold of him as quickly as you can, and tell him to come to the telephone and call me up, and I gave him the telephone number.

Q. Did you tell him anything about what you wanted to talk with Hennessy? A. I did not. In fact I declined a proposal of assistance from somebody else. While I was at the telephone booth some one suggested I might send some other message by him if I wanted to. I said I did not want to.

Q. Who was that? A. I don't know who it was.

Q. You have lots of unknown assistants here? A. He spoke to me and said he was a New York man, he had been here and heard the testimony, and thought I might want to send some indirect message. I said no, I should send the facts, as you asked me to.

Q. Have you talked with any one else about it? A. Yes, while I was sitting waiting for the telephone to be answered some one came up and said, "They are a pretty bad lot up there, Mr. Wardman." I said, "No, not all by any means, some of them are my personal friends."

Q. Won't you repeat that remark? A. He came up and said, "They are a pretty bad lot up there, Mr. Wardman." I said, "Not all, by any manner of means, some of them I think are my personal friends, and many of them whom I don't know at all I admire very largely."

Q. Hadn't you better print that to-morrow morning? A. I had not thought of mentioning it if you had not asked me.

Q. I want to know if you had any conversation with any other person? A. I did not, sir, I did not send any message to Mr. Hennessy, direct or indirect, except as I stated.

Q. I am past that. I want to know if you talked with any person concerning the authorship of this article? A. I did not.

Q. At any time since it was printed? A. No, I did not.

Q. When you were subpoenaed here you knew the purpose for which you were subpoenaed? A. Not entirely, no.

Q. You knew it was for the purpose of ascertaining the author of this article, didn't you? A. The subpoena stated I was here to give information about the sources of our information and about the origin of the articles.

Q. Did you take any pains to get that information? A. No. I did not.

Q. Make any effort, whatever? A. No. I did not.

Q. Do you decline to do so? A. I have since done so. I asked the managing editor.

Q. That did not turn out to be a prolific source of information? A. Well I made the effort.

MR. RAINES: Mr. President:

THE PRESIDENT: The Senator from the Forty-second.

MR. RAINES: I move that Mr. Wardman be excused from the witness stand at present, but that he be directed to continue in attendance upon the sessions of the joint assembly.

THE PRESIDENT: The question is upon the motion of the Senator from the Forty-second. Those in favor will say aye. (Cries of aye.) Those opposed, no. (Cries of no.) It seems to be carried.

MR. TOMPKINS: I should like to make a motion to reconsider that. It seems to me it is placing a punishment upon the gentleman which I do not believe is deserved, and if the members here will look upon it as a punishment I take it for granted they will reconsider their vote. I make that motion, Mr. President.

SENATOR RAINES: Before making the motion I wish to say I consider this a matter of very serious consideration as to the position which Mr. Wardman places himself by refusing to answer questions put by this joint convention. I desire to have time to consider that, and I move to lay the motion of the gentleman from New York to reconsider on the table.

THE PRESIDENT: The question is upon the motion of the Senator from the Forty-second to lay upon the table the motion of the gentleman from New York, Mr. Tompkins. Those in favor say aye. (Cries of aye.) Those opposed, no. (Two cries of no.) Motion is carried.

THE CHAIR would inquire if you wish Mr. Wardman's attendance further to-day or not until the next session of the joint assembly?

SENATOR RAINES: Not until the next meeting.

THE PRESIDENT (addressing Mr. Wardman): You are excused until 8.30 o'clock Monday evening next.

We are ready to proceed, Mr. Stanchfield.

MR. STANCHFIELD: We will call Miss Saxton.

MABEL M. SAXTON, called as a witness on behalf of the respondent, and being duly sworn, testified:

DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Miss Saxton, where do you reside? A. Dunkirk, N. Y.

Q. And your occupation is what? A. Stenographer.

Q. You are stenographer in whose employ? A. Stearns, Towne & Smith.

Q. How long have you been a stenographer in Mr. Stearns' office? A. I think it will be eight years in October.

Q. Were you a stenographer in his office at the time when the case of Wirtner against the city of Dunkirk, Lester F. Stearns and Warren B. Hooker was commenced? A. I was.

Q. Do you remember whether or no you took down at anyone's dictation the answer that was served in that case? A. I did.

Q. At the time when the answer in that case was dictated to you was Judge Hooker there? A. He was not.

Q. Do you recall whether the findings of fact were likewise dictated to you in that office? A. They were.

Q. Was Judge Hooker in the office or present at the time when the findings of fact were dictated to you? A. He was not.

MR. STANCHFIELD: I think that is all.

MR. COMAN: No cross-examination.

CLERK GLEASON: Witnesses subpoenaed to appear here to-day will appear here on Monday evening at 8.30, unless otherwise excused.

SENATOR RAINES: Mr. President, I move that subpoenas be issued for the editors of the New York Press named by Mr. Wardman—the managing editor, the night editor—that will be sufficient designation—and the copy editor.

THE PRESIDENT: The Senator from the Forty-second moves that subpoenas be issued for the attendance of the managing editor, the night editor and the copyist of the New York Press—to attend when?

SENATOR RAINES: Monday evening at 8.30.

THE PRESIDENT (continuing): Monday evening at 8.30. Those in favor say aye. (Cries of aye.) Opposed, no. The motion is adopted.

MR. RAINES: Now, Mr. President, I move that the joint session stand adjourned until Monday evening at 8.30 o'clock.

MR. ROGERS: Mr. President, I want to ask the Senator to withdraw the motion for a moment in order to move that the Chair be authorized and directed to issue subpoenas also to any or all of the witnesses, requiring them to produce the manuscript of the copy of the article which is in question here before us.

THE PRESIDENT: The question is upon the motion of the gentleman from Broome, Mr. Rogers, that subpoenas *duces tecum* be issued the manager of the Press for the production of the copy of the article which is in question here before us.

Carried.

The joint assembly stands adjourned until Monday night at 8.30 o'clock.

At the hour of 5 o'clock p. m. the President and the Senate returned to the Senate Chamber.

Mr. Raines moved that the judiciary committee be requested to investigate and inform themselves as to the proceeding proper to be taken in case of punishment of a witness for contempt.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President thereupon declared the Senate to stand adjourned until Monday evening at 8.25 p. m.



MONDAY, JULY 17, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. Charles W. Heisler.

The journal of Friday, July 14, was read and approved.

The hour of 8.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly chamber to meet the Assembly in joint session.

JOINT SESSION—ASSEMBLY CHAMBER.

THE LIEUTENANT-GOVERNOR: The Clerk of the Assembly will read the journal of the previous session to the joint assembly.

(Journal read.)

THE LIEUTENANT-GOVERNOR: If there are no objections the journal will stand approved as read.

The Clerk of the Assembly will read the following communication:

NEW YORK, July 17, 1905.

To Hon. M. LINN BRUCE, *Lieutenant-Governor, Albany, N. Y.:*

I notice in the newspapers that upon the 14th instant a witness in the proceedings against Justice Hooker is reported to have stated that he had been informed that the Delaware and Hudson Company had taken some action or intended to exert some influence with reference to those proceedings. This is absolutely without foundation. This company has done or attempted to do nothing whatever with reference to the matter and the proceedings cannot possibly affect it in any way. If yourself or any member of the Legislature should desire I shall be entirely willing and ready to attend and testify accordingly.

DAVID WILCOX,

*President of the Delaware and Hudson Company.*



THE PRESIDENT: The Clerk of the Assembly will call the names of the witnesses directed to be subpoenaed by the joint assembly.

MR. CLERK: M. G. Scott.

THE PRESIDENT: Call it again.

MR. CLERK: M. G. Scott.

MR. CLERK: John Hennessy.

THE PRESIDENT: The Clerk will read the following communication, received by the President of the joint Assembly from Mr. Hennessy:

*To the Joint Session of the Senate and Assembly of the State of New York:*

The undersigned having been served with a subpoena to appear before you at the Capitol in the city of Albany on the 17th day of July, A. D., 1905, at 8:30 o'clock P. M. of that day, then and there to be examined as a witness and to testify to the truth as to the contents and origin of a certain article published in the New York Press, Wednesday morning, July 12, 1905, and appearing in column one, page one, of said issue of said newspaper and headed "Big Lobby for Justice Hooker; Scandal is thick in Albany," and directing me to bring with me and produce at that time before said Senate and Assembly in joint session all original manuscripts of said article, any and all copies thereof, any and all telegrams, letters, papers or other documents in any manner relating to said article or the contents and origin thereof, and which may pertain to or be required in investigation of the said subject hereof, respectfully objects and protests against the jurisdiction assumed by you in issuing said subpoena, and requiring my attendance and the production of said papers upon the following grounds:

First, That said joint session is organized only for the purpose of hearing the proofs and determining whether a certain Justice of the Supreme Court shall be removed from his office, and the subject matter stated in said subpoena is not material to such

inquiry, or involved therein and therefor the said joint session is without authority to inquire into the matter referred to in said subpoena, or to require my attendance as a witness thereto. (See *People ex rel. McDonald vs. Keeler*, 99 N. Y. 463, 485.)

Second. That the power of investigation is given only to each house in respect of matters upon which it is authorized to legislate and the said joint session not having such power, nor this extraordinary session having any present authority to so legislate, it is without power to investigate.

Third. That neither house of the Legislature as now convened nor any of the members of said houses at the time of the publication of the article here referred to or at the time of the issuing of said subpoena, had any legislative capacity until required by the Governor's direction. On the contrary, the said houses were exercising a special authority not requiring the action of the Governor thereon aside from which each of them was without power to act.

Lastly, the State Constitution provides (Article 4, Section 4): "He (the Governor) shall have power to convene the Legislature or Senate only on extraordinary occasions. At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration." The subject referred to in your subpoena has no relation to the subject recommended for your consideration by the Governor and as a consequence you are prohibited by the Constitution from acting in respect thereto.

Respectfully,

(Signed) JOHN A. HENNESSY,

*Managing Editor New York Press.*

Dated, July 17, 1905.

THE PRESIDENT: The Clerk informs that service of subpoena has not been made upon Mr. Scott. The Clerk will call the name of Mr. Wardman.

MR. CLERK: Erving Wardman. Mr. Wardman here.

THE PRESIDENT: Mr. Wardman is present.

The Clerk will note the default of Mr. Hennessy.

**THE PRESIDENT:** We are ready to proceed, Mr. Stanchfield.

**MR. CARR:** Mr. President, in view of what took place here last Friday, I may with justice and propriety ask leave to make a statement and suggestion. I know it would not be in order without the permission of the chair, but on Friday it was stated here that a corporation with which I am connected as counsel was interested in the exoneration of Justice Hooker and that was connected with a charge made in the newspaper of which he is the editor that improper influences were being brought to bear upon the members of the Legislature for the purpose of securing his exoneration. No one could read the article in the paper, no one could hear the statement made without being impressed with the idea that it must be a reflection certainly upon myself as counsel for Judge Hooker, because of my connection with that corporation.

I came into this case as counsel for Justice Hooker without suggestion or solicitation from any person connected with The Delaware and Hudson Company. Since I have been connected with it as counsel no person belonging to that company has made to me the slightest suggestion or intimation that it was a desire on its part that he should be exonerated or what might be the result. I had done in it what I have done, in the discharge of my duty as an attorney of the State of New York, in behalf of the client that I represent. So much then for myself.

The corporation that I am counsel for has, I know, done nothing whatever in this case; it has no interest in it; none of its cases have ever been heard or tried before Justice Hooker or determined by him, and it is not of the slightest consequence to it as a corporation whether he be exonerated or whether he be removed.

So far then the matter might be left by itself, but a charge has been made that the men who constitute the jury that are to determine the matter of his guilt or innocence have been subjected to improper influences. It is said they have been bribed or attempted to be, and whatever the reflection may be upon

counsel, whatever the reflection may be upon Judge Hooker, the reflection is also upon the members of the body, and since no one is singled out the reflection is upon all.

It would seem to me that it was the bounden duty of this Assembly, to, in the first place, ascertain whether there was the slightest foundation for such a charge, because, if there is, then this Assembly will know what to do with the counsel that may have been so guilty and will know what to do with Justice Hooker, who is the subject of controversy here. If it were the trial of a case in a court of justice and a charge was made that the jury that was to pass upon the question of the guilt or innocence of a man on trial had been bribed or attempted to be, that trial would be suspended until the court had ascertained the truth or falsity of the charge, and when it was ascertained it would then proceed as it was meet and proper under the circumstances disclosed. Here, Justice Hooker has a constitutional right to be heard, not alone to be heard himself but by his counsel, not alone by counsel but by witnesses, and he has the same constitutional right to have the question of his guilt or innocence determined by the members of this body acting with free, with untrammelled and unbiased minds. With a charge of bribery hanging over this Assembly, with the possibility that, if a man should vote in exoneration of Justice Hooker, he might be held up as one to whom the charge of bribery applied, he cannot have and will not have what the constitution guarantees to him, such a trial and such a determination as is his due.

I have hesitated to make this suggestion because it might possibly bring about some delay in the determination of this matter. But the delay is of too slight consequence compared with the larger consequences that lie behind. We have done all we could to hasten this hearing. We have put no obstacle in the way. We are as anxious as the gentlemen here to come to the end of it. But we are more anxious than all of that that end shall come when this charge has been lifted from the Legislature, and when he can have the right which the Constitution gives him. That is his right. That is what we ask. To that we are entitled, and

that, it appears to me, this Assembly ought to be willing to accord him, and they ought to be willing to investigate and see what foundation there may be for this charge and clear it up absolutely before we come to a final determination of the case that is now on trial.

That is the suggestion I have to make, and whether it takes a longer or a shorter time, every member of this Assembly should take pleasure in seeing that that which is the constitutional right of this respondent is here accorded.

THE PRESIDENT: We are ready to proceed. (After a pause.) Call your next witness.

MR. STANCHFIELD: Pardon me, Mr. President, they have requested me behind to wait, and for that reason I was sitting here waiting.

MR. ROGERS: For my own information as well as for the information of the joint assembly, I would like to have the subpoena which was served upon Mr. Hennessy read, in order that we may see what its phraseology is and for what purpose he was obliged to be present. Has there been a return made by the Sergeant-at-Arms?

THE PRESIDENT: The Clerk will read the subpoena.

The Clerk read the subpoena as follows:

● (Subpoena.)

*To John A. Hennessy, J. J. O'Leary, M. G. Scott:*

GREETING: You and each of you are hereby commanded and required that, laying aside all other business you be and appear in your proper person before our Senate and Assembly in joint session at the Capitol in the City of Albany on the 17th day of July, A. D. 1905, at 8.30 o'clock p. m. of that day, then and there to be examined as a witness and to testify to the truth as to the contents and origin of a certain article published in the New York Press, Wednesday morning, July 12, 1905, and appearing in

column of page one of said issue of said paper and headed "BIG LOBBY FOR JUSTICE HOOKER; SCANDAL IS THICK IN ALBANY," and you are hereby further directed to bring with you and produce at that time before our said Senate and Assembly in joint session all original manuscripts of said article, any and all copies thereof, any and all telegrams, letters, papers and other documents in any manner relating to said article or the contents and origin thereof and which may pertain to or be required in investigation of the said subject hereof, and if you fail to obey this subpoena you may be punished as for legislative contempt. Hereof fail not at your peril.

WITNESS, Hon. M. Linn Bruce, Lieutenant-Governor, and  
President of the Joint Assembly, and Hon. S. Frederick Nixon, Speaker of the Assembly, this 14th day of  
L. S. July, 1905.

Attest:

(Signed) LAFAYETTE B. GLEASON,  
*Clerk of the Senate.*

(Signed) A. E. BAXTER,  
*Clerk of the Assembly.*

MR. ROGERS: I for one, and I think I share the feeling of the members of this body generally, feel that this is a matter which should be approached without undue bias or prejudice and with a becoming appreciation of the nature and character of this body and of the grievous character of the charges which has been made against it. This body has assembled here as has been said before in the discharge of a grave and serious duty, one imposed upon it by the mandate of the people as embodied in the State Constitution, and a duty which involves questions going to the very foundations of our State Government. But the duty which is involved is a duty which rests not upon us alone; there is a duty which every citizen of the State owes in this matter, and above all else, Mr. President, there is a duty which those citizens owe who by their peculiar occupations stand as the molders and guid-ers of public thought and opinion. That duty, though it be not written in the Constitution of our land, is just as great, morally and ethically, as any duty devolving upon us, and I for one, speak-

ing without feeling, regret that the gentlemen who are responsible for the newspaper article in question, and at least the gentleman who above all others, as managing editor of the paper is responsible for its policy, seems to treat the matter in so flippant a way and seems to regard it as a matter of comedy rather than one of serious and solemn duty to the State. This, however, Mr. President, is but the prelude to the astounding feelings which are awakened by the communication which has been received and read from Mr. Hennessy. It is surprising and astounding that any gentleman should seek a subterfuge in a case like this, behind the most peculiar technicalities which could possibly be raised. It is possible that the phraseology of the subpoena which was issued may have been of such a character, although I for one, do not concede it, that he has some possible foundation or reason for taking advantage of such a subterfuge. But with his main proposition that an inquiry of this character is not relevant here I take issue. There cannot be the slightest question but that he is in error. The charge has been made and the statement sent broadcast through the columns of the New York Press that bribery or that boodle or words to that effect that have conveyed the impression that improper influences have been set at work by the respondent in this proceeding for the purpose of preventing an adverse decision.

If that be true it is a confession of guilt upon the part of the respondent which should be proved here, as bearing upon the issues which are before this joint assembly. If that be true it is one of the most relevant facts that could be brought out in this inquiry and to say that it is neither relevant nor material or not within the province for which this Legislature has been convened, is to say that justice is a travesty, I am voicing my individual notion as to what the proper procedure should be. In the motion which I am about to make, I am merely voicing those sentiments; if a better course can be suggested, I am willing to listen to it and yield to such suggestion.

I am advised that the motion I am about to make has already been anticipated by others and I move the following resolution:

Resolved, That John A. Hennessy having heretofore been served with a subpoena commanding him to appear at this time and place to give testimony, and the said John A. Hennessy having refused to obey said subpoena, the President of the Senate and the Speaker of the Assembly are and each of them is hereby directed to forthwith issue their warrant to the Sergeant-at-Arms of the Senate commanding him to take into custody the body of the said John A. Hennessy, of the borough of Brooklyn and city of New York, wherever he be found and to bring the same forthwith before the Senate and Assembly convened in joint session and there answer upon the issues, and show cause why he should not be judged guilty of contempt, with the authority to keep said Hennessy in his custody to await the further order of the Senate and Assembly.

THE PRESIDENT: The motion is upon the resolution offered.

MR. GRADY: Mr. President, I hope that the resolution will not be pressed. I think it has been prepared and presented without that careful investigation into the legal bearings of this matter which the importance of it justifies. We are here in obedience to the summons of the Governor of the State, acting under a concurrent resolution of both houses, to investigate the charges made against Justice Warren B. Hooker. That is the beginning and the end of the purpose of the joint session, and without the action of the two houses by concurrent resolution, the scope of that investigation may not be added to. It will require that we resolve into our separate houses of Senate and Assembly and in either one of them, taking notice of the publication, determine that the questions that it raises shall be investigated and inquired into either in joint assembly or by a joint or separate legislative committee, and then the subpoena directed to a witness in such a proceeding will have some legal weight. But I do not think it can be contended and I am sure that the lawyers, both for the State and for the respondent in this proceeding, will agree that from the authority which we get as a joint session under a concurrent resolution which limited our work to the investigation of the charges



against Justice Warren B. Hooker, we cannot pretend to any legal authority to investigate in joint session the charges made against somebody else, no matter how closely they may be related to the matter which we have legally in hand. As was suggested, if this was the trial of an action in a court of law, civil or criminal, and a charge was made that the jury had been subjected to improper influences, of course the court would institute an inquiry, as the court has a right to institute an inquiry, as either or both branches of the Legislature have the right to institute an inquiry, into the truth or falsity of such charges. But that proceeding conducted by the court would be an absolutely independent proceeding in the trial in relation to which the charges were made. I do not care now to go any further than to suggest that if it is meant to take this matter up to the extent that has been indicated in the telegram of the President of the Delaware and Hudson Canal Company, and in the remarks of the counsel for the respondent, Mr. Carr, as well as in the remarks of the member from Broome, we had better resolve ourselves into our separate houses and proceed in such manner that we may get some legal authority for our action, and at that time I will have something to say upon the main question.

MR. PAGE: Mr. President, it seems to me that the Senator from the 14th fails to appreciate the disobedience of a subpoena issued according to joint resolution authorized by both bodies is to be tested. It is not for a witness to say in advance whether or not the examination he is to be subjected to is material or relevant or not, but he must obey the subpoena and appear before the body and make his objection to the relevancy or materiality of testimony when the questions are propounded. The refusal to attend in obedience to a subpoena lawfully issued is an act of supreme contempt and should be dealt with as such. I have grave doubts, however, as to the power of this joint assembly to punish as for a contempt. Undoubtedly the Legislature in passing their rules of order and procedure could have given this joint assembly that power, as both bodies possessed it. But the only power that is

given by our rules is to subpoena witnesses and interrogate them, and I believe the power of this joint assembly is limited as would be the power of a committee or as would be the power of the committee of the whole of either or both houses, and that is to note upon its journal the contempt and have it reported by its presiding officer to either one of the houses which, under the constitution and the legislative law, has ample power to deal with the entire question. I doubt very much that we have the power to grant the warrant that has been moved, and therefore would move as an amendment that the default of John A. Hennessy in appearance to a subpoena duly issued by this joint assembly be noted.

THE PRESIDENT: That has already been done, Senator.

MR. PAGE: That the presiding officer of this body report such contempt to the Senate and also report to the Senate the questions that have been propounded to Irving Wardman, a witness, and his refusal; and also to call the attention of the Senate to the publication in the New York Press of the 12th and 13th of July, which charged members of the Legislature in a scandalous manner and that that entire matter be reported by the presiding officer to the Senate.

MR. SAXE: I desire again to call the attention of the chair to Rule 6, providing that no debates shall be had upon these motions without the consent of at least twenty members.

THE PRESIDENT: Do I understand the Senator to make a point of order?

MR. SAXE: Yes.

THE PRESIDENT: The point is well taken——

MR. ROGERS: Mr. President: I ask that the debate be had. If twenty members rise, that gives us the right to debate.

THE PRESIDENT: A sufficient number are up. The gentleman will proceed.

MR. ELSBERG: It seems to me we are engaged in a very serious proceeding, and that it is well to have exactly what we

are doing thoroughly well understood. I am compelled to disagree, as I so often am, with my friend, the Senator from the 14th District, and I am compelled to disagree in a lesser degree, perhaps, but still to disagree with the Senator from the 19th District. It seems to me in the reason of things that any power that is possessed by either house of the Legislature must necessarily be possessed by both houses when they are in joint session, and a consideration of such decisions in the courts as I have had time to read of the nature and origin of the Legislative power to punish for a contempt has brought me to the conclusion that it is a power that can be properly and legally exercised by this joint assembly. But I want to point out to the Senator if I may, and to this body for its information, exactly what the course proposed by the amendment that has been offered would mean, and the difficulty into which it might bring us.

Here is a subpoena which has been issued, properly attested in accordance with our rules, to a witness, commanding him to do what? Not to appear before the bar of the Senate, not to appear before the bar of the Assembly, but to appear before our joint session of the Legislature. Now it is argued by the Senator from the 19th that we have given power to the joint assembly to issue a subpoena but we have not in our rules provided for its disobedience or for the punishment which should follow this disobedience. I desire to suggest to my friends of the legal profession in this body that the power to issue a subpoena must necessarily presuppose the power in the body to punish any one who fails to obey it; otherwise there is very little embraced in this power to subpoena that we have given—

MR. PAGE: Will the Senator yield for a question?

MR. ELSBERG: Surely.

MR. PAGE: Could a joint committee of the two houses of the Legislature who had issued a subpoena summon a witness before them and punish him?

MR. ELSBERG: I will answer that by saying no. But it is a question which seems to me to be in no way relevant to the in-

quiry we are pursuing. As the Senator suggests, if the Legislature gives power to the joint committee, undoubtedly they could. But let me suggest that a committee of either House or the joint body have only such powers, as a legal proposition, which I think the Senator will agree with, as the body appointing the committee, be it the one House or the joint body, has invested the committee with; and consequently the committee, being no greater than its creator, or rather being less, must naturally report to its creator, unless provision has been otherwise made, the contempt for which punishment is asked. But here is a joint session of the Legislature—and I hope the lawyers will follow the argument I am trying to make—here is a joint session of the Legislature which in the nature of things must have all the legislative power which there is on this subject. If there is any power in the Legislature to call for witnesses, if there is any power in the Legislature to punish witnesses who fail to obey subpoenas that are issued by it, where can that power be if it is not in a joint session composed of both Houses? And if there be in either House a power to subpoena witnesses and to punish for a contempt in disobeying them, is not that power equally in the joint session which is composed of both Houses together? It seems to me that as a matter of common sense it must follow that whatever power is possessed by either House must in the nature of things be possessed by the joint session composed of both. But suppose we do what the Senator from the 14th suggests; suppose we report that to our Senate and suppose we have it reported back to the Assembly, the failure of this witness to obey this subpoena—where is there any power in the Senate to punish the witness and where is there any power in the Assembly to punish him? He has not been guilty of disobeying any process issued by the Senate; he has not been guilty of disobeying any process issued by the Assembly; he has been guilty of disobeying, if he has disobeyed anything at all, the process solemnly issued by this joint session or convention of the Legislature—

THE PRESIDENT: The Senator's time has expired.

MR. ELSBERG: I ask that I may have half a minute.

**THE PRESIDENT:** The Senator from the Fifteenth will proceed unless there is objection.

**MR. ELSBERG:** I desire to suggest only this one additional consideration. Here is a witness who has treated this Legislature, composed of both Houses, embracing the entire and sovereign legislative power of this State, with the most defiant contempt. Shall it lie in his mouth to argue whether we have power to punish him for that flagrant contempt or not? Shall he be heard to urge technical objections to us bearing upon our power to punish him for the contempt of which he has been guilty, or shall this joint session, exercising all the power that it has and all the power that it claims, seek to bring to its bar and to bring to punishment the man who has treated its process with such flagrant disregard and contempt? Shall he be heard in further contempt to suggest that we have no power, or shall we, exercising the power that we have and claim to have, do what necessarily follows ought to be done when a subpoena has been issued and disobeyed—shall we seek to compel respect for our own process or shall we not? That is the question that confronts this joint session of the Legislature, and it seems to me the only reasonable answer to make is, let us issue our warrant for what it is worth at least. Let not this witness tell us before we have issued it that it is worth nothing at all.

**MR. FISH:** In drawing the rules under which the joint assembly is acting I gave to this matter some consideration, thinking perhaps to draft a rule with reference to contempt. The conclusion that I came to then was, that the Legislature in regard to contempt could only punish when provided by law, that is, by a statute of the Legislature. There is no statute which authorizes the joint session of the Legislature to punish for contempt; there is a statute which authorizes each House of the Legislature to punish for contempt, and for that reason I did not include in these rules any provision, and did not anticipate that there would be any question arise in this proceeding which would call for any such punishment or attempt to punish.

Now, it is a very serious question and it is doubtful in my mind whether the joint session, without the act of the Legislature passed by both Houses and approved by the Governor, has the authority to punish for contempt. I may be mistaken about it, I only express my views.

MR. MORELAND: Mr. President, I rise more for information than to give it. The proposition which confronted my mind, and has all along in this proceeding, is what authority, either under the Constitution or under the statute of the State, have we for this joint assembly?

It would seem to me, and has seemed to me, under the very shallow investigation which I have been able to give it, that we are meeting here in joint session absolutely without any authority whatever. I have been unable to find in the slight investigation I have given the matter, so far, that there is the slightest authority of any kind or nature which gives us the right to meet in joint assembly or in joint session. I should like to have that matter discussed by gentlemen who have investigated it, if they have, because, as has been well said here, it is a very important matter, and I want to vote upon it intelligently.

MR. ROGERS: I assume that the gentleman agrees with me that when the Constitution gives a power it gives an ample power to do all that that power conveys, does it not?

MR. MORELAND: Undoubtedly.

MR. ROGERS: Then, Mr. President, when the Constitution says that in a proceeding of this kind the accused shall have an opportunity to be heard, does it not imply the power to meet in such manner that such hearing may be held and conducted?

MR. MORELAND: I should say that it did, Mr. President, but as I understand it we are meeting and proceeding under the form, substantially, of a concurrent resolution, and in that event each House acts upon it independently, and we are meeting here under a concurrent resolution, and, as I said before, it seems to me that the hearing to which the justice is entitled is a hearing before

each body independently and separately if he so desires and elects, and that we are met here in joint session to take this evidence and to have this hearing simply under the authority of his concession, and that if he did not concede that right or privilege in order to facilitate matters and to prevent two hearings I believe, so far as I have investigated, that it is his absolute constitutional right to have a complete hearing before each body separately and independently under the concurrent resolution.

The point which the Senator—I called him by name, not knowing his district—Senator Elsberg, to whom I always listen with much pleasure,—I do not think he reached the root of the matter as it presents itself to my mind, because of the fact that I was in doubt whether we had any right whatever under the law to meet in joint session. I believe the Constitution defines what are joint sessions and when the Legislature has a right to meet in joint session.

SENATOR ELSBERG: Does the doubt of the gentleman extend as far as to our power to issue a subpoena at all in joint session?

MR. MORELAND: Precisely.

SENATOR ELSBERG: Of course then the doubt would follow naturally that we had no power to punish for contempt.

MR. MORELAND: My contention is, that we are meeting here absolutely without authority of law in joint session, and that every act which we do is absolutely nugatory except so far as it is done by permission and consent of the justice who is here under investigation.

MR. FISH: Mr. President, I think the gentleman from Chemung is in error in regard to this matter of our having the right to meet here in joint session. The Constitution provides that we shall give a hearing to the justice, and it does not provide with reference to how that hearing shall be had, what course the hearing shall take. There is no statute which provides in regard to that. Therefore it seems to me it is competent for this Legislature, by concurrent resolution, as it has done in this case,

to provide that the hearing shall be before both bodies of the Legislature in joint session, and that while we meet here in joint session for the purpose of this hearing we are met legally and we have a right to proceed. When it comes to the question of punishment for contempt that is another question.

MR. TOMPKINS: Mr. President, I would like to ask the gentleman if he would yield for a question?

MR. FISH: Certainly.

MR. TOMPKINS: Where is that concurrent resolution?

MR. FISH: The concurrent resolution was passed by the Senate and Assembly.

MR. GRADY: On page 70 of the proceedings.

MR. TOMPKINS: I thought perhaps he referred to section 1 of the Rules of Practice and Procedure.

MR. FISH: Mr. President, I refer to the concurrent resolution which states that Justice Hooker be given an opportunity to be heard before the Senate and Assembly in joint session.

MR. GRADY: Mr. President, the Senator from the 19th and the Senator from the 15th have disposed of my argument by ignoring it, and it is the most convenient way in the world of getting out of any uncomfortable position. No one pretends if our subpoena was lawfully issued that the witness is not guilty of contempt. The point is that the subpoena was not lawfully issued, and no matter how defiant his attitude may be toward that which is unlawful, it never can be contempt.

MR. PAGE: You think that we have no jurisdiction to issue the subpoena?

MR. GRADY: Absolutely and unqualifiedly, and I hope inside of five minutes to convince you of that fact.

MR. PAGE: It will take more than five minutes.

MR. GRADY: No it won't, because the Senator is very open to reason. How did we get the jurisdiction to investigate the



charges against Justice Hooker in joint session? Because on the 10th day of June the Senate passed a concurrent resolution that we would meet at 1 o'clock on that day for the purpose of doing that very thing, hearing his return and proceeding then afterwards under the rules of procedure which were then adopted. That is the source of our authority, the resolution passed by the Senate on the 10th day of June, and the only subpoena that could be lawfully issue out of this joint assembly was a subpoena in form as prescribed by the rules of procedure adopted for that investigation. Now there is no lawyer that is jealous of his reputation that will undertake to controvert that. If having decided you shall go into joint session, you decided the form of the subpoena that shall be issued to your witnesses, until by joint resolution that form of subpoena is changed, no other subpoena can issue from this joint assembly. No such subpoena was served on John J. Hennessy, and so far as its legal effect was concerned you might as well have had the Sergeant-at-arms direct a polite note to Mr. Hennessy stating that for reasons that must be apparent to him he would like to meet him to-night in the lobby outside the Assembly Chamber.

MR. PAGE: Haven't you overlooked the words "substantially in the following form" that are right here?

MR. CRADY: No, no, I haven't. Now the Senator can take that home with him to-night and the subpoena that was served upon Mr. Hennessy, and if he can make Hennessy's subpoena substantially in that form, or that subpoena substantially in the form that was served upon Mr. Hennessy, he will have accomplished the greatest match-work in the world. This subpoena substantially in this form calls for a witness to testify to the truth in our behalf in a certain proceeding now pending before our Senate and Assembly for the removal of Warren B. Hooker. The subpoena that was served upon Mr. Hennessy asked him to testify to the origin and truth of a newspaper article relative to the trial of Justice Warren B. Hooker. Now I don't hold any brief from the newspaper, but I have a regard for the propriety of the procedure of the Senate and Assembly, par-

ticularly in a matter of this importance. Up to the present time, the joint assembly has no jurisdiction in the investigation in which we are now proceeding. The first essential of acquiring jurisdiction has been neglected, and until the Senate and Assembly by joint resolution, or Senate or Assembly by separate resolution, institute a legal legislative inquiry into the matters involved in that newspaper article, no subpoena of any authority or weight can issue.

SENATOR ELSBERG: Will the Senator permit a question?

THE PRESIDENT: Will the Senator yield for a question?

SENATOR GRADY: Yes, sir, with pleasure.

SENATOR ELSBERG: I would like to ask the Senator whether the statements or alleged statements of fact contained in that newspaper article are or are not material and relevant or connected with the very matter that the Legislature is investigating?

SENATOR GRADY: In some respects they are.

SENATOR ELSBERG: Well, if they are, have we not the power to subpoena and inquire or to get testimony concerning matters connected with our investigation?

SENATOR GRADY: If I will be given time——

THE PRESIDENT (interrupting): The Senator's time has expired.

SENATOR ELSBERG: I ask it be extended.

THE PRESIDENT: The Senator will proceed unless there is objection.

SENATOR GRADY: I would like to illustrate that. Mr. Hennessy might be called as a witness in this joint investigation into the charges against Justice Hooker and he might be interrogated as to every statement in that newspaper article contained, and he might be asked if he pretended to any knowledge that connected Judge Hooker with any one of the several disagreeable things

mentioned in that article. That might be done, and that is the beginning and the end of any responsibility that could attach to Judge Hooker through or by that article. That is as far as you could go with him. As I understand what you want to find out is who wrote the article, the sources of information, the particular men whom it was intended the article should apply to. Reading it, I imagined it was intended to apply to all; I am glad it has been restricted a little; and when it comes to that you must start an investigation very different from the investigation in which we are now concerned. I do not ask in a contest with very good lawyers like the Senator from the Fifteenth, and the Senator from the Nineteenth, and a very poor lawyer like myself, that my word should be taken, and I am quite willing that the two Houses shall return from the joint assembly into their respective bodies and submit the question to one or both of the judiciary committees.

MR. RAINES: I do not think it is desirable to take up any more time this evening in a discussion of this question, and I therefore move that the resolution of the gentleman from Broome, and the amendment offered by the Senator from the Nineteenth, be laid upon the table.

THE PRESIDENT: The question is upon the motion of the Senator from the Forty-second. Those in favor say aye (cries of aye). Those opposed no. It seems to be carried. It is carried.

MR. RAINES: I move that the subpoena of this joint session be issued to John A. Hennessy, as provided in the rules of this joint session.

THE PRESIDENT: The question is upon the motion of the Senator from the Forty-second. Those in favor say aye; opposed, no.

THE PRESIDENT: It seems to be carried. It is carried. The Chair wishes to inquire whether the joint session wishes to interrogate Mr. Wardman any further.

MR. RAINES: Not this evening.

MR. ROGERS: I move that Mr. Wardman be directed by the President to continue in attendance until excused by the joint session.

THE PRESIDENT: Mr. Wardman may be excused from further attendance to-night.

MR. STANCHFIELD: I would like to call the attention of the President to the fact that while Mr. Stearns was upon the witness stand the other day he was asked by Mr. Rogers, of Broome, to produce before the Assembly Chamber the written communication or letter that he stated according to his recollection had been forwarded to the common council of the city of Dunkirk in behalf of himself and Mr. Justice Hooker calling for the resolution of the common council adopted by the common council of the city of Dunkirk. I offer in evidence in obedience to that request a certified copy of the resolution introduced in the common council in which reference is made to that paper.

THE PRESIDENT: Have you any objection, Mr. Coman?

MR. COMAN: None.

MR. STANCHFIELD: "Council Chambers, Monday, December 9, 1901, 7:30 p. m. Special meeting called by the Mayor to take action relative to a petition received from Stearns and Hooker, owners of postoffice building, asking for the withdrawal of resolutions adopted by the Common Council, December 3rd, 1901, giving them a lease of certain city property on the north side of City Hall, which lease embodied restrictions prohibiting the erection or construction of a fire hall or other structure on said property within a specified time.

Present, Mayor Scannell, Councilmen McKay, Russell and Paxton.

Absent, Councilmen Hogan, Weiss, Holstein, Matteson and Burns.

No quorum present.

Councilman Russell moved to adjourn subject to the call of the Mayor.

Carried.

Adjourned.

Approved, D. Scannell, Mayor.

Approved by the Common Council:

Timothy J. Hogan, William Burns, James C. Russell, James Holstein, Geo. Paxton, F. D. Matteson, Robt. McKay."

" CITY OF DUNKIRK, N. Y.,

Office of the City Clerk,

Saturday, July 15, 1905.

*To Whom it may concern:*

This is to certify that the attached is a true and correct copy of the official minutes of the proceedings of the Common Council of the city of Dunkirk, N. Y., at a special meeting held Monday, December 9th, 1901, and to further certify that I have personally searched the municipal records and files in my charge for the original petition mentioned in the attached document and find the same to be missing.

(Signed) H. G. SHERWOOD,

*City Clerk of the City of Dunkirk, N. Y."*

Seal City of Dunkirk.

MR. STANCHFIELD: It is fair for me to state that no action was taken upon the petition and attached to the official proceeding of the common council is the certificate of the city clerk of the city of Dunkirk and corporate seal of the city.

MRS. ETTA E. HOOKER, called as a witness in behalf of the respondent, being duly sworn testified as follows:

DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Mrs. Hooker, are you the wife of Justice Hooker? A. I am.

Q. I would like you to speak, Mrs. Hooker, as loudly as you can. I don't imagine you can make yourself heard all over this room. And your place of residence is where? A. Fredonia, N. Y.

Q. In what year were you married to Judge Hooker? A. In September, 1884.

Q. And from September, 1884, down until the present time have you made your home at Fredonia? A. I have.

Q. What was your father's name? A. Chauncey Abbey.

Q. And what relation, if any, Mrs. Hooker, did he sustain to the First National Bank of Fredonia? A. For some time he was president of the Fredonia National Bank.

Q. The Fredonia National Bank? A. Yes.

Q. He was the president of it? A. He was; not at the beginning, but he was after a time; most of the time.

Q. But there was a time during which he was its president? A. There was.

Q. When did your father die? A. In September, 1894.

Q. Was he the president of that bank at the time of his death? A. He was.

Q. Mrs. Hooker, are you acquainted with Frank P. Ball? A. I am.

Q. How many years have you known him? A. Well, I couldn't say just the number of years, but for a long time.

Q. Running back to about what year, would you say? A. Well I should presume 20 years; possibly longer than that.

Q. And during all that time where has he made his home? A. In Fredonia also.

Q. Now, came there a time when he entered the employ of the bank of which your father was the president? A. Yes, sir.

Q. Do you recall in what capacity he entered the bank? A. I think it was a clerk.

Q. And did he continue there for some time? A. I wouldn't say how long; it was for some time.

Q. Has your acquaintance with Ball continued over all the time that you have mentioned? A. Pardon me.

Q. Has your acquaintance with Frank P. Ball continued over all of the time that you have mentioned? A. Yes, sir.

Q. Do you recall, Mrs. Hooker, in 1896 of entering into an oil venture or speculation with some people in Fredonia? A. I do.

Q. Do you recall generally who was interested in that enterprise with you? A. I couldn't name them all.

Q. Name such of them as you can remember? A. Well, now, I think F. G. Green was one.

Q. What was his first name? A. Frederick R. Green and Frank Ball, William B. Barker—I don't know whether there were others or not.

Q. The people that you have named, were they or were they not residents of Fredonia? A. They were.

Q. Do you recall about the time when that enterprise started of Frank Ball coming to you with reference to it? A. I do.

Q. Do you recollect what he wanted? A. Why he wished me to endorse his note.

Q. And it was for what purpose that he wanted you to endorse his note? A. Why, it was simply an accommodation endorser.

Q. And do you know what he wanted to do with the note? A. He wished to pay a certain amount—he wished to use it at the bank, I understood, to pay a certain amount down on the oil venture.

Q. On this oil deal that you had gone into with him? A. Yes.

Q. Now, did you endorse his note? A. I did.

Q. Do you recollect what the amount was of that note, about? A. I think it was \$1,666.00. Anyway it was one-sixth of a thousand dollars.

MR. GOODRICH: \$10,000.

THE WITNESS: \$10,000.

Q. Something over \$1,000? A. Yes, sir.

Q. Now, at that time did you loan him any money? A. I did not.

Q. Now, do or do not you recall the fact that after that there were two other smaller notes that he came to you to endorse? A. There were.

Q. Did you endorse them for him? A. I did.

Q. Upon either of those smaller notes did you advance him any money? A. I did not.

Q. Now, with reference to any of the three notes, did he ask you to advance him personally any money? A. He never asked me for any money.

Q. So that upon all three of these notes, while they were in existence, you were an accommodation endorser? A. That was all.

Q. When you endorsed these notes for Frank P. Ball, did you believe him responsible? A. I did.

Q. Had he the reputation in Fredonia of being responsible for the amount of these notes? A. He had.

Q. Now, do you recall the fact that there came a time when these three notes were consolidated into one? A. I do.

Q. Do you recollect, Mrs. Hooker, the amount of the large note? A. I do not exactly; it was right around \$3,000.

Q. In the neighborhood of \$3,000. Now, did you endorse this \$3,000 note? A. I did.

Q. As an accommodation endorser? A. As an accommodation endorser.

Q. Upon that \$3,000 note did you ever advance him any money? A. I never did.

Q. Did he ever ask you to? A. He never did.

Q. Do you recollect, Mrs. Hooker, whether or no there came a time when by reason of some arrangement with the bank you passed off from that note? A. I do.

Q. Can you tell us about what time that was? A. I think it was in 1899.

MR. STANCHFIELD: I think the evidence shows here it was —Mr. Coman, doesn't it?—in December, 1899.

MR. CARR: December, 1899.

MR. COMAN: Yes.

Q. Would that be about your recollection, Mrs. Hooker? A. It would, yes.

Q. Now, after about December, 1899, did your name ever again appear upon this Ball note or any renewals of it? A. Not after that settlement with the bank.

Q. When you went off from that note, Mrs. Hooker, was there any understanding, express or implied, between you and Ball or



you and the Fredonia National Bank, that you were to remain liable upon it or for any of the indebtedness represented by it? A. I was not liable in any way, shape or manner.

Q. And never were after that time in December, 1899? A. Never after that time.

Q. Do you recollect about when Judge Hooker was appointed to the Supreme Court bench? A. I do. I don't know as I could name just exactly the time.

Q. Well, it appears in the evidence here, that it was in November, 1898? A. Yes.

Q. November 10th. Before that had he been a Member of Congress? A. He had.

Q. For about how many years? A. Eight years. He was elected for 10 years, but he resigned.

Q. He resigned at the time when he was appointed a judge? A. He did.

Q. Now, from the time when you passed off from that note of Ball's down to this time, have or have not you been constantly in Fredonia? A. Pardon me.

Q. Have or have you not been practically all the time at Fredonia? A. Why, yes, nearly all the time.

Q. Was there a time during the interim when you went abroad? A. Yes; I was abroad for nearly nine months, I should say.

Q. For how long, madam? I can't hear you. A. Well, I left the last of October and returned the latter part of July.

Q. You left the last of October in what year? A. 1901.

Q. And you returned when? A. I think it was right around the 20th of July, 1902.

Q. Aside from that interval have you been in Fredonia substantially all the time? A. Yes, sir.

Q. Now, I will ask you, Mrs. Hooker, whether during the time the judge was in Congress he was away from his home a good deal of his time? A. He was.

Q. Can you give us a notice to what extent? A. Why, all the time that Congress was in session.

Q. Regularly, during all the period that he was an elected Congressman? A. Yes.

Q. Since he became a judge either by appointment or election, what will you say as to the length of time or the part of the time that he has been in Fredonia? A. Why, he has been away most of the time.

Q. And if at home, when would he be at home? A. Why, Sundays.

Q. Do you know in a general way after he was appointed to the bench and entered upon service as a judge where he held terms of court? A. You mean before he was appointed to the Appellate Division?

Q. Yes. A. In eight western counties, I think it was.

Q. That would take in Buffalo? A. Oh, yes.

Q. The whole eight counties in that judicial district? A. Yes, I don't know as I could name all of the counties but it was in eight counties. I think that it was eight counties.

Q. Now aside from holding court in the counties that comprised that judicial district did he not hold terms of court in other places in the State? A. He did.

Q. Can you tell us where? A. He occasionally held them in Brooklyn, or either New York or Brooklyn.

Q. Now there came, Mrs. Hooker, a time when you either saw in the newspaper or heard of charges being made against your husband of irregularities in connection with Frank P. Ball's service in the postoffice? A. Will you please repeat the question?

Q. There came a time, did there not, when either in the newspapers or by word of mouth you heard of alleged irregularities in connection with Frank P. Ball and the postoffice at Fredonia? A. There did.

Q. Now did you until that time, ever know whether or not Frank P. Ball rendered actual service at the postoffice at Fredonia? A. I did not.

Q. Did you ever hear it talked in your home in the presence of your husband until those matters became public property that he knew that Frank P. Ball had never rendered service in the postoffice? A. I didn't.

Q. What have been the habits during the time when Judge Hooker has been in Fredonia as to his being home evenings? A. Usually home evenings.

Q. Have you children? A. We have two.

Q. How old are they? A. Our son is 18 last May and the daughter 15 last May.

Q. 18 and 15. You know Maurice Hooker? A. I do.

Q. What relation is he to Judge Hooker? A. His nephew.

Q. Now when he was appointed in the postoffice do you know where you were? A. I was in Europe.

Q. And you say you returned in June? A. July following.

Q. Of what year? A. 1902.

Q. Do you remember about the time when the charges were circulated in reference to Ball that there were also similar statements with reference to Maurice Hooker's connection with this postoffice? A. I do.

Q. Now during the time that Maurice Hooker was in Fredonia and you returned from Europe, did you ever know whether or not Maurice Hooker was doing work or rendering actual service at the postoffice in Fredonia? A. I did not.

Q. Did you ever hear that subject discussed in your home circle? A. I never did.

Q. Until these charges came up? A. Not until then.

Q. Did Judge Hooker, so far as you are able to say, and judging from any conversations that you had with him, know that either Ball or Hooker were both rendering services in the postoffice?

MR. COMAN: Objected to as incompetent and hearsay.

THE PRESIDENT: Objection sustained.

Q. Did he ever state in your presence or say in your presence that he knew that either Frank P. Ball or Morris Hooker were not rendering service in the postoffice.

MR. COMAN: Same objection, Mr. President.

THE PRESIDENT: Same ruling.

Q. Who is Thomas O'Neil, Mrs. Hooker? A. He is a mail carrier there in Fredonia.

Q. And before he became a mail carrier what was he? A. He was a servant there at our house.

Q. And had been for how many years? A. Why, I should presume six or eight years; I could not tell just the number; it was for some number of years.

Q. Do you remember ever having any conversation with O'Neil in reference to his desire to get a place in the postoffice? A. I spoke to him about it at one time.

Q. And did you have any talk with your husband upon that subject? A. I did at one time, about the time of the appointment.

Q. Do you recall what that conversation was?

MR. COMAN: I object to that, Mr. President.

THE PRESIDENT: Objection sustained.

Q. Was O'Neil in your employ down to about the time he was appointed to a place in the postoffice? A. He was.

Q. And after that he left you? A. He left us at once.

MR. STANCHFIELD: That is all. You may cross-examine.

CROSS-EXAMINATION by MR. COMAN:

Q. Mrs. Hooker, you had been pretty well acquainted with Mr. Ball for twenty years I understand you? A. Quite so, yes.

Q. And how frequently during that period of time were you accustomed to seeing him? A. I could not tell you.

Q. Did he come to your house ever in a social way? A. Not that I remember of.

Q. And did you ever call at his house? A. I have.

Q. When he was there? A. I had a talking acquaintance with his wife, also with his people, father and mother.

Q. Did you know at any time in what business Mr. Ball was engaged, Mrs. Hooker? A. I did not.

Q. Nor in what place his business was carried on, whether in Fredonia or elsewhere? A. Not of my own knowledge.

Q. Well do you mean by that that you did not go to his place of business? A. I did not.

Q. Did you know by reputation what his business was? A. I did, part of the time.

Q. What was it? A. Part of the time I understand he has been a ticket agent there in Dunkirk.

Q. And during what period of time did you so understand? A. I could not tell you, I do not know.

Q. Can you give us any idea on that subject? A. I could not.

Q. Whether it was one year or five or ten? A. I could not.

Q. Nor could you give us any idea, Mrs. Hooker, of any dates which would be covered by his being engaged in that business? A. I could not, Mr. Coman.

Q. How did you learn that he was engaged in that business, Mrs. Hooker? A. Saw it in the paper.

Q. Do you remember what paper you saw it in? A. Why, he has advertisements occasionally in the Fredonia Censor.

Q. But you have no idea as to the time? A. No, sir.

Q. Whether it was in 1897, 1898, 1899, 1900 or any particular year? A. I could not tell you.

Q. You say, Mrs. Hooker, that upon the first note of \$1,666, you were an accommodation endorser? A. I do.

Q. You also said that you were an accommodation endorser upon the two smaller notes; that was not strictly accurate, was it, Mrs. Hooker. (No reply.)

Q. You understood did you not, Mrs. Hooker, that you were liable as a partner for the indebtedness which was represented by these two smaller notes.

MR. STANCHFIELD: We object to that as calling for a conclusion, incompetent and improper and not the facts as we understand it.

THE PRESIDENT: Will the stenographer repeat the question. (Question read.)

MR. STANCHFIELD: There is no evidence of any partnership here.

MR. PRESIDENT: The objection is overruled.

Q. What is your answer? A. I did not understand any partnership.

Q. What did you understand the arrangement was under which you and Ball and Barker and Greene and others entered into this oil speculation? A. We each had an interest in the speculation—in the purchase of the property.

Q. You altogether paid \$10,000, did you not? A. We did.

Q. Each one of you paying one-sixth, or \$1,666? A. We each paid in proportion to what our share was.

Q. It was all the same property, was it not? A. It was.

Q. And were you informed that these notes which you signed for Ball represented his share of the indebtedness which had been incurred on account of that speculation? A. He simply wanted to raise the money, as I understood it, and I endorsed the note as an accommodation for him.

Q. And what was the purpose for which he wanted to raise the money, Mrs. Hooker? A. Why, he wanted to pay his proportion of the \$10,000.

Q. Ah, but that was the first note, was it not? A. It was.

Q. What did you understand he wanted to raise the money upon those second notes for, the last two, the smaller ones? A. I supposed it was his proportion of the expenses.

Q. Which had already been incurred, had they not, in operating this oil property, in carrying it on? A. I should presume so.

Q. Now, subsequently, as you answered Mr. Stanchfield, the three notes were consolidated in one which amounted, as you recall it, to a little upwards of \$3,000? A. Yes, sir.

Q. \$3,085? A. I don't remember the amount.

Q. And that was in September, 1898, was it not? A. I couldn't tell just the date.

Q. Well, would you think it was about that year? A. It was some time in the fall, I think.

Q. Of that year? A. Of 1898.

Q. During the period while you remained upon those notes, Mr. Ball came regularly to your house, did he not, to secure your endorsement, on the renewal of this note? A. He did.

Q. Do you remember how often that was? A. I do not.

Q. Would it be your best recollection, Mrs. Hooker, that it was?

A. I could not tell you whether three or four months.

Q. You would think it was three or four? A. I don't care to guess, for I don't know.

Q. Now you have said that Mr. O'Neil left you at once after his appointment to the mail service? A. Yes.

Q. And do you remember whether he immediately went to work carrying the mail or not? A. I don't know anything about it.

Q. Did he bring the mail to your house, do you remember? A. He never has brought mail to our house.

Q. Some other carrier has brought the mail to your house? A. Yes, sir.

Q. You don't know anything about it, whether he went immediately to work or not? A. I don't.

Q. During the months of July and August has your husband been in the habit of holding court, Mrs. Hooker? A. He has not, no.

Q. And has he usually been at home during those months? A. Part of the time.

Q. And part of the time where? A. Different places.

Q. But not in attendance upon the courts as you understand it? A. I think not.

MR. STANCHFIELD: We have but Judge Hooker. Shall we start in at this late hour?

SENATOR RAINES: Mr. President.

THE PRESIDENT: The Senator from the Forty-second.

SENATOR RAINES: I move the joint session stand in recess until 10 o'clock to-morrow morning.

THE PRESIDENT: The Senator from the Forty-second moves the joint assembly do now adjourn. Those in favor say aye; opposed no. The joint assembly stands adjourned until 10 o'clock to-morrow morning.

At the hour of 10:15 o'clock the President and Senate returned to the Senate chamber.

Mr. Raines moved that the Senate adjourn to 9:50 A. M. tomorrow.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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TUESDAY, JULY 18, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. Chas. W. Heisler.

The journal of yesterday was read and approved.

The hour of 10 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber to meet in joint session.

JOINT SESSION—ASSEMBLY CHAMBER.

**THE PRESIDENT:** The Clerk of the Assembly will read the journal of yesterday. (Journal read.)

**THE PRESIDENT:** If there are no corrections, the journal will stand approved as read.

The Clerk of the Senate has informed the Chair that the Assembly by motion this morning requested the president of the joint assembly to permit the members of the joint assembly, during the excessive heat, to sit without their coats. With all due respect, and very great respect, to the opinion and the judgment of the Assembly, the president of the joint assembly cannot grant the request (laughter), feeling that it would not be in keeping with the dignity of this body and would be a gross impropriety.

We are ready to proceed.

**MR. STANCHFIELD.** I will call Mr. Nugent.

**ALBERT E. NUGENT,** called as a witness and being duly sworn, testified:



DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Mr. Nugent, where do you reside? A. In Dunkirk.

Q. And your occupation is what? A. Attorney-at-law.

Q. How long have you practiced law in the city of Dunkirk?

A. About 13 years.

Q. Do you remember about the institution of the suit of Charles J. Wirtner against the city of Dunkirk, Lester F. Stearns and Warren B. Hooker? A. I do.

Q. Are you acquainted with Mr. Larkins, the attorney for the plaintiff in that action? A. I am.

Q. Are you acquainted with Mr. Warner and Mr. Farnham, who, about the time of the commencement of the action were law partners of Lester F. Stearns? A. Yes, sir.

Q. You know Truman C. White, a justice of the Supreme Court in that judicial district? A. I do.

Q. Are you able to state whether or not you were present before Mr. Justice White in the city of Buffalo when the argument was had on the 30th of December, 1901, as to the propriety of continuing the preliminary injunction that had been obtained in that case? A. I was present at that time; I am unable to give the exact date, but think perhaps that is it.

MR. STANCHFIELD: The record, I state for your information, I think that is right, Mr. Coman, the 30th of December, 1901.

MR. COMAN: That is right, I believe.

Q. That is the confessed date; the question is whether or no you were present at the time the argument for the continuance of the injunction took place? A. I was present.

Q. And at that time what justice was presiding? A. Justice White.

Q. Truman C.? A. Yes, sir.

Q. What lawyer was there in behalf of the plaintiff? A. Mr. Larkins.

Q. And who was there in behalf of the defendants? A. Mr. Warner.

Q. What is Mr. Warner's first name? A. Elton D.

Q. Do you remember whether or no Mayor Scannell was there?

A. He was there, yes, sir.

Q. During the proceedings that took place? A. Yes, sir.

Q. Now will you go on and state as well as you are able, Mr. Nugent, what took place there before Justice White at that time?

A. As I recall the facts now, Mr. Larkins stated to Justice White somewhat briefly the nature of his application.

MR. STANCHFIELD: Pardon me, I want to say to the joint session that this testimony relates not to the trial before Justice White but to a motion that was argued before him before the trial ever occurred as to whether or no the preliminary injunction ought to be continued, the object of the testimony being to show that before the trial ever took place Justice White was informed of the nature and character of this action. Go ahead, Mr. Nugent.

THE WITNESS: I don't think that the affidavits were read. The facts were stated somewhat briefly and as I recall from what Justice White stated to the plaintiffs' attorney, that from the statements made he didn't see that he had very much of a case and soon after that statement there was a statement made, whether it was made by Mr. Warner or Mr. White, I am unable to state, that the parties got together. I was not city attorney at that time, Mr. Farnham was city attorney, and Mayor Scannell requested me to consult with him. I told Mayor Scannell I was not city attorney and I refused to have anything to do towards advising him in the matter. If I stated anything at all it seems that my recollection is that the injunction had been set aside and I didn't see any necessity for any stipulation to be entered into, but if he desired to enter into any stipulation he must do so upon his own motion and not upon my advice. That is in substance, I think, all that took place around about the court room there; while part of this took place in the private chambers there at Special Term, some of it took place in the court room.

Q. Now in this discussion that took place before Justice White, did the attorneys upon both sides participate? A. They did to some extent; yes, sir.

**CROSS-EXAMINATION by MR. COMAN:**

Mr. Nugent, you have stated that Mr. Larkins stated briefly to Justice White the nature of his application.

Q. You may state to the best of your recollection what Mr. Larkins said to Justice White. A. As I recall now he stated that the action was brought for the purpose of restraining the city of Dunkirk from building upon certain portions of their lot and to compel them if they did build to build upon some other portion, that is the westerly portion of the lot instead of the northerly portion, something like that. That in substance as I remember it was Mr. Larkins's statement to the court.

Q. You were present and heard that statement? A. I heard some such statement, yes, sir.

Q. Had you read the pleadings in this action? A. No, I hadn't; all I read was what was in the newspapers.

Q. Did anybody else state to Justice White what the nature of the application was? A. Mr. Warner made some statement but I am unable to state what he said.

Q. Was there any argument as to the propriety of the continuance of this injunction? A. Not any extended.

Q. Was there any argument? A. I have stated before that Mr. White stated that he did not see any grounds for the application.

Q. You didn't regard what he said as an argument. A. That was from the bench.

Q. Was there any argument between the counsel? A. Not before the court, except Mr. Warner stated something I am unable to recall.

Q. The affidavits were not read? A. I think not; I do not recall they were.

Q. The pleadings were not read? A. I do not think they were.

Q. You went there at the request of Mayor Scannell? A. No; I happened to be in Buffalo that day, and stepped into the Special Term at that time they were there.

Q. Had you learned before you went in there that the proceeding was coming up that day? A. Yes, sir; I knew it was.

Q. From whom did you learn that? A. I think from my partner.

MR. BEDELL: Will the witness speak louder? We cannot hear.

THE PRESIDENT: The witness will speak as loud as possible.

Q. From whom did you learn this proceeding was coming before Justice White on that day? A. I think it was from my partner, Mr. Hefferman; he was not an attorney at that time; he was studying in my office.

THE PRESIDENT: Are there any other questions of this witness?

MR. STANCHFIELD: I will call Warren B. Hooker.

WARREN B. HOOKER, called as a witness in his own behalf, testified as follows:

DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Judge Hooker, are you the respondent? A. I am.

Q. Are you a justice of the Supreme Court? A. I am.

Q. When were you first appointed to the Supreme Court bench?  
A. November 10, 1898.

Q. When did you qualify under that appointment? A. That day.

Q. And were you nominated the succeeding fall? A. I was.

Q. And then elected a judge of the Supreme Court? A. Yes, sir.

Q. Qualifying under that election when? A. Immediately after; between that and the 1st of January.

Q. Between that and the 1st of January, 1900? A. Yes, sir.

Q. Your term as justice of the Supreme Court by election commenced when? A. January 1, 1900.

Q. And since that time and down until the institution of the proceedings of the Legislature of the State of New York have you been actively engaged in performing the functions of the office of a justice of the Supreme Court? A. I have.

Q. You are how old, Judge Hooker? A. Forty-eight.

Q. Where were you born? A. In Perrysburg, Cattaraugus county, this State.

Q. When did your parents move to that section of the State? A. About 1830.

Q. And did they reside there continuously down until the time of your birth? A. Yes, sir.

Q. There were how many children in your family? A. Twelve.

Q. And where did you come? A. I was the youngest.

Q. What was your father's occupation? A. Farmer.

Q. Where did you attend school and acquire an education? A. At the district school near by our home, and at the Forestville Academy, Forestville in Chautauqua county.

Q. And can you tell me how old you were when you left school and entered upon the study of the law? A. Not quite 18; between 18 and 19.

Q. Where did you study law? A. At Forestville.

Q. And do you recollect when you were admitted to the bar? A. In 1879, I think.

Q. And where? A. At the Rochester General Term.

Q. After your admission to the bar where did you commence to practice? A. At Forestville, with Mr. Reckert, with whom I studied.

Q. Was he a practicing lawyer there? A. He was.

Q. Did you form any partnership with him in the practice of law? A. Yes, sir; immediately after I was admitted I formed a partnership with him.

Q. How long did you continue to practice law at Forestville? A. Until 1882, April, 1882, I think.

Q. Speak up as distinctly as you can. A. I will, I will try and make myself heard.

Q. You say you continued to practice law with him until what time? A. April, 1882.

Q. Now, did you practice law continuously at that place until your election or did you move away? A. I moved away.

Q. Where? A. I spent the time from April, 1882, until June, 1884, on the Pacific Coast.

Q. That is a period of about two years? A. Yes, sir.

Q. On your return from the Pacific slope, where did you settle and practice law? A. At Fredonia.

Q. In Chautauqua county? A. Yes, sir.

Q. That you say was in June, 1884? A. Yes, sir.

Q. From that date until the present, has Fredonia been your home? A. It has.

Q. Did you marry there? A. I did.

Q. Have you a house there? A. Yes, sir.

Q. And reside there with your family? A. Yes, sir.

Q. And children? A. Yes, sir.

Q. How many? A. Two.

Q. Are they girls or boys? A. One son and one daughter.

Q. And how old is the son? A. He is 18 past.

Q. And the daughter? A. The daughter is three years younger, 15 past.

Q. What was your wife's maiden name? A. Abbey.

Q. What was her father's business? A. He was the president of the Fredonia National Bank at the time he died.

Q. And he had been prior to his death for how many years president of that bank? A. Ten years or more.

Q. Had you known him over that period of time? A. Yes, sir.

Q. Now did or did you not commence to take an active interest in politics at an early age? A. Somewhat; yes, sir.

Q. What was the first office which you ever held? A. I think I was clerk of the village of Forestville while I was reading law, if you call that an office.

Q. That was before you became of age? A. I wouldn't say just the year that was, Mr. Stanchfield.

Q. What was the next public place that you filled? A. I was elected surrogate of the county in 1878.

Q. Of what county? A. Chautauqua.

Q. And how long did you fill that office? A. One term.

Q. Covering what period of time? A. Three years, I think.

Q. And what was the next office that you filled? A. I think the next was supervisor of the town of Pomfret, the town in which the village of Fredonia was situated.

Q. And how long did you represent the town of Pomfret on the board of supervisors? A. Two years, 1889 and 1890.

Q. And upon retiring from the office of supervisor were you then nominated for Congress? A. I was in 1890.

Q. How old were you when you were nominated for Congress? A. 32.

Q. The congressional district of which you were the nominee at 32 years of age took in what counties? A. Allegany, Cattaraugus and Chautauqua.

Q. And the office of Congressman from that district within the few preceeding years had been filled by what men, do you recall? A. William G. Laidlaw, of Cattaraugus county; Dr. Brewer, of Chautauqua; Walter L. Sessions, ex-Governor Patterson, of Westfield, Chautauqua.

Q. They were the men who had within a recent period of time filled that place? A. Yes, sir.

Q. When did you take office under your Congressional election? A. The 4th of March, 1891.

Q. By a precedent how many terms prior to your election to the office had the Congressmen served from that district? A. I think two since Fenton's—

Q. What is it? A. I was about to remark since Governor Fenton's election in the '60's.

Q. The precedent had awarded two terms? A. Yes, sir.

Q. Now you were elected you say in 1890? A. Yes, sir.

Q. For how many successive terms were you elected to Congress from that district; making five terms in all?

Q. And had you served out a period of ten years? A. I did not; no, sir.

Q. I say had you served out would it have covered a period of ten years? A. Yes, sir.

Q. When you were appointed a justice of the Supreme Court on the 10th of November, 1898, did you on the same date resign your seat as member of Congress? A. I did.

Q. From the 10th of November, 1898, until the 4th day of March, 1900, was there any elective representative to Congress from your district? A. There was not; no, sir.

Q. Who succeeded you on the 4th day of March, 1900? A. Edward B. Vreeland, of Salamanca, Cattaraugus county.

Q. There was, in other words, no election in that interim to fill a vacancy? A. No, sir.

Q. While you were a member of Congress from that district did you fill the place of chairman of any committees in the House of Congress? A. I did.

Q. What? A. Rivers and harbors.

Q. And you were appointed chairman of that committee under whose regime, as speaker? A. Thomas B. Reed.

Q. And in what year were you appointed chairman of that committee? A. At the commencement of the 54th Congress, in December, 1895.

Q. When you were how old? A. Oh, I was 36 years old.

Q. And you held that place down to the time you resigned? A. Yes, sir.

Q. In a comprehensive statement, what are the duties and power and what kind of business comes before the committee of rivers and harbors in the House of Congress? A. Generally, appropriations for the improvements of the rivers and harbors throughout the country.

Q. And do the measures of that committee and its reports favorable or unfavorable to matters pending before it cause debate upon the floor of Congress? A. Somewhat; yes, sir.

Q. And was it incumbent upon you as its chairman to debate upon the floor of Congress the reports of that committee? A. Somewhat; yes, sir.

Q. Are you aware, Judge Hooker, whether there is any unwritten precedent or custom obtaining among Congressmen as to the fact that a retiring congressman shall have the charge of the distribution of patronage of the postoffice of the place in which he lives and resides? A. That is a custom that prevails in some congressional district, as I understand.

Q. And had the existence of such a custom been brought home to you during the period that you were serving in Congress? A. Yes, sir.



Q. Is or is not the rule that congressmen suggests the name of men who shall fill federal appointments and federal places within their congressional districts? A. Yes.

Q. Do or do not, and did the custom prevail while you were in Congress congressmen suggest to the Federal Government the names of people who shall fill the various postoffices within the limits of their congressional district? A. Yes, sir.

Q. Did you suggest people for the various places while you were a member of Congress? A. I did.

Q. In your territory? A. I did.

Q. Are you acquainted with Melvin H. Taylor? A. I am.

Q. Who was the postmaster at Fredonia? A. Yes, sir.

Q. From 1899 or thereabout until 1900 and odd? A. Yes, sir.

Q. Did you suggest him for appointment? A. I did.

Q. Had he served in that place before? A. I think so, but it was before my time in Fredonia.

Q. Now while you were in Washington did you become extensively acquainted with members of Congress and the United States Senate? A. Yes, sir.

Q. Did you likewise form the acquaintance of the federal officials under the various departments of the executive? A. Yes, sir.

Q. Now in the eight or ten years that you were a member of Congress from that district were you requested by people of different sorts for favors at Washington? A. Yes, sir.

Q. In a general way, of that kind? A. Well, the requests that come to a member of Congress are pretty extensive.

Q. State them in a comprehensive way? A. Well, everything almost that a person could think of as of another wanting, they would request of their congressman; they acted as a sort—well an errand boy in many respects; did errands at the departments for them, besides their other duties.

Q. Did it in a general way come to you from people who had served in various wars, requests for pensions or increase in pensions? A. Yes, sir, a vast number of them.

Q. And applications for increases in salaries? A. Yes, sir.

Q. And advancement in position? A. Yes, sir.

Q. And appointments to places? A. Yes, sir.

Q. Now do you know Frank P. Ball, Judge Hooker? A. I do.

Q. When did you meet him? A. I think I first knew him when he was working in the Fredonia National Bank.

Q. Do you recall whether or not you, yourself, endorsed that note—the first one? A. I do not recall whether I did or not. The records you have offered in evidence indicate that I did. Am not sure whether I endorsed it or not.

Q. Now, in going upon that note was Mrs. Hooker an accommodation endorser? A. Yes, sir.

Q. Was that note discounted at the bank? A. It was.

Q. At that bank, to your knowledge, was it a matter of custom when people did not put up collateral to require an accommodation endorser? A. That was my understanding of its custom; yes, sir.

Q. Did Mrs. Hooker or did you when this arrangement started ever loan Frank P. Ball, directly, a single dollar? A. Not a dollar.

Q. Now that arrangement and that endorsement took place some two years, did it not, before there was any talk between you and Frank P. Ball, or anyone else, with reference to Ball's desiring a position in the postoffice at Fredonia? A. Yes, sir.

Q. Now, you did not continue upon that note from time to time? A. No, sir.

Q. Do you recall the fact that there came a time when, owing to Ball's inability to keep up his share of the expenses, that note, by merger with two smaller ones, was increased to something like \$3,000? A. Yes, sir.

Q. Did your wife indorse that note? A. She did.

Q. Was there any money advanced by her to Ball at that time? A. Not a dollar.

Q. Was her indorsement upon that paper, down until the time when she passed off of it by reason of turning over property to the bank, solely that of an accommodation indorser? A. It was.

Q. Did she ever occupy any other or different relation to that paper than that of an accommodation indorser? A. She did not.

Q. Do you remember, in December, 1899, of the fact that Mrs.

Hooker did turn over property to this bank as a consideration for which she was released from that note? A. I do.

Q. Was she ever upon it after that time? A. No, sir.

Q. When she passed off from it was there any understanding or arrangement, either expressed or implied, between her and the bank, or between Mrs. Hooker and Ball, that she should in any way remain liable upon it to the bank or to Ball? A. There was not.

Q. How long did Ball continue an employee of the postoffice at Fredonia after Mrs. Hooker ceased to be liable upon that paper as an accommodation indorser? A. I don't know. It appears from the record that he resigned in——

Q. 1902? A. 1902.

Q. What month? A. December, I think.

Q. December, 1902? A. I think the record shows that.

Q. And she passed off his paper in January, 1900? A. In December; that is, she was released by resolution of the bank in December, 1899.

Q. And for the balance of his term was in no way liable upon that paper? A. No, sir.

Q. Came there a time, Judge Hooker, when Frank P. Ball applied to you to help him get some position in the Federal employ? A. Yes, sir.

Q. Are you able to state about when that was? A. I cannot state definitely; it was, I think, in the year 1898.

Q. What conversation did you have with him? A. I do not recall it all.

Q. Give the substance of it as near as you can remember it? A. He told me he wanted to get something to do; he would like to get a position, and asked me if I could assist him in securing some sort of a position; I told him I would see if I could; possibly I could help him.

Q. To what political party did you then understand Frank P. Ball belonged? A. He was a Democrat.

Q. Now, what, if anything, did you try to do? A. I spoke to him at that time, or afterward, or about that time, about a position at Washington, and he told me on account of his mother,

who was somewhat of an invalid and advanced in years, that he did not care to go away from home just at that time and would prefer to have something at home if I could get it——

Q. Yes. A. ——and I told him possibly I could get him something in the postoffice. That was about all the talk we had.

Q. And what did you do after that talk? A. When in Washington I called at the Postoffice Department.

Q. When you say you called at the Postoffice Department, upon whom did you call? A. The First Assistant Postmaster-General.

Q. Who was he? A. Perry Heath.

Q. What conversation did you have with Perry Heath? A. I told Mr. Heath that there was a nice, bright young fellow in Fredonia who was a constituent of mine that I would like to get a position for, and suggested to him that if it could be given I would like to have him have a place in the Fredonia postoffice, and asked him to look it over and if it could be done I would like to have him have a position there.

Q. And was it after this conversation with Mr. Heath, the First Assistant Postmaster-General, and as a consequence of it, that you wrote the letter to Mr. Beavers that has been introduced in evidence here in reference to Ball? A. Yes, sir.

Q. Now, aside from your talk with Heath, did you have any talk with Arthur B. Moore, the postmaster at Fredonia, about it? A. I did.

Q. Do you recollect what your conversation was with him? A. In substance, that Mr. Ball wanted a position and I would try and see if I could get him appointed in the Fredonia postoffice.

Q. Is that about all you can recall? A. That is about all I recall.

Q. What happened then with reference to Ball? A. He was appointed as I understood.

Q. Now have you stated, as far as you are able, all that you had to do with reference to the appointment of Ball to a position at Fredonia? A. Yes, sir.

Q. Now during the years you were in Congress how much of the time were you away from Fredonia? A. During all the ses-

sions of Congress, during all the time Congress was in session rather.

Q. And that included how many months did you say in the year? A. Well, the session opened the first Monday in December, the long session, and usually terminated in June; the short session of course opening in December and closing on the fourth of March.

Q. And the times when Congress was not in session were you generally in Fredonia or elsewhere? A. Well, sometimes I was at home and sometimes I was away from home; I could not recall as to that, Mr. Stanchfield.

Q. After you became a judge what will you say as to the portion or proportion of time you spent in Fredonia? A. The assignments of courts were almost continuous from the first of September until the latter part of June.

Q. And during that period of time when as a rule would you say you were at home? A. I would get home Saturdays and stay over Sunday, leave Sunday night or Monday morning, early Monday morning, to go back and take my court on Monday morning.

Q. And did you hold court in all of the counties that comprise the Eighth Judicial District? A. I did.

Q. Where else in the State of New York did you hold terms of court? A. In Brooklyn and New York.

Q. During July and August of the years since you have been upon the Supreme Court bench where have you spent your time? A. Usually at home.

Q. The rest of the year, as you have stated, you were generally away? A. Yes, sir.

Q. Now did you ever know whether Frank P. Ball rendered any actual service in the postoffice at Fredonia or not? A. I did not.

Q. Did you ever talk with him upon the subject of the character or kind of work he was doing in the postoffice at Fredonia? A. No, sir.

Q. Was the fact of his not doing work in the postoffice at Fredonia ever in any way brought to your notice or attention until

these charges, in one form or another, commenced to be circulated at Fredonia? A. It was not.

Q. When your wife endorsed this paper of Frank P. Ball's, and during the time she continued upon that paper in the relation that you have described, was or was not Frank P. Ball solvent and responsible? A. I think he was; yes, sir.

Q. And was he reputed to be worth property sufficient to meet the liability called for by the note upon which your wife was an accommodation endorser? A. Yes, sir.

Q. Did you ever have any arrangement or talk with Frank P. Ball, or anyone else, to the effect that you would get him this place in the postoffice department with the understanding that he need not do any work there, upon the theory that he would devote the salary of that position to the payment of this obligation or any portion of it? A. I did not.

Q. Now when did you, Judge Hooker, first meet George W. Beavers? A. I could not tell you the year; I think it was during the 54th Congress.

Q. Well, the 54th Congress covered what years? A. '94 I should think, 1894 or 5, I first met him, somewhere along in there.

Q. And from that time down until your resignation as member of Congress, and in fact for some time thereafter, what place or position did he occupy in Washington? A. He was at the head of the salary and allowance division in the Postoffice Department.

Q. In the Postoffice Department? A. Yes.

Q. And that in a general way gave him charge of what? A. Well, allowance for clerk hire, that is all.—

Q. (interrupting) That class of governmental business. A. Yes, sir.

Q. That class? A. That class of work. Yes, sir.

Q. Government expenditures? A. Yes, sir.

Q. After your acquaintance with Beavers did you meet him occasionally? A. I did.

Q. You came to be upon friendly terms with him? A. Yes, sir.

Q. What were his relations generally with the members of Congress? A. I think very friendly with many members of Congress.

Q. Until the accusations were made public embodied in the Bristow report what was Beavers' reputation among the members of Congress? A. I think he had the reputation of being—let me understand what you mean.

Q. I mean for integrity and honesty? A. I never heard his integrity questioned. He was spoken of very highly by the members of both houses.

Q. Both the Senate and Congress? A. Yes, sir.

Q. I notice that in the letters that have been introduced here from you to Beavers that you marked them personal; what was the significance of the word "personal" in that connection? A. So they would reach his attention; so they would reach him.

Q. Had you any other object in it? A. Nothing whatever.

Q. Had you any design or intention by the use of the word "personal" to keep the contents of those letters from any person? A. Not the slightest.

Q. And you understand as a fact do you not all of those letters that have been introduced in evidence here were left in the files of the department open to the inspection of any one? A. I so understand from the committee that went to Washington to secure copies.

Q. With reference to the appointment of Frank E. Ball, or of Maurice Hooker, or Ora Caldwell, Henry J. Pemberton, Thomas O'Neil or Catherine K. Clark, or Minerva Jeffrey, was there any understanding between you and Beavers with reference to your paying him anything as a consideration? A. No, sir.

MR. COMAN: I object to the question on the ground that the witness should give the conversation and not the effect.

THE PRESIDENT: The objection is sustained in that form.

Q. Was there ever any talk between you and Mr. Beavers with reference to in any way paying him or giving him any consideration for his assistance in helping in securing the appointment of the men whose names I have given you?

MR. COMAN: We object upon the ground that there is no charge here of that kind against Judge Hooker.

MR. STANCHFIELD: There is a charge to that effect; it

charges him criminal accusations, accusations that the witness deny with George W. Beavers, in one count, and George W. Beavers and another count, of defrauding the Government of the United States. I have a right to ask that as bearing upon the truth of those accusations as to whether he had any talk with his co-conspirator. Any lawyer here knows that it is elementary it does not require discussion.

Q. (Read by stenographer.) A. No, sir.

THE PRESIDENT: I do not understand your objection goes to the form of a question.

MR. COMAN: No, sir.

Q. With reference to the appointment of Frank P. Ball or Henry J. Pemberton, Thomas O'Neil, George Cooper, Ora Caldwell, Minerva Jeffrey, Catherine K. Clark, or Maurice Hooker, did you ever intend by the requesting their appointments in conjunction with George W. Beavers or Melvin H. Taylor or any one else commit the crime of conspiracy? A. I did not.

Q. Either against the Government of the United States or the State of New York? A. No, sir; I neither intended to or did I in either instance.

Q. In any of the transactions or conversations that you had with Perry Heath or George W. Beavers in your endeavor to secure the appointment of the people whose names I have mentioned, had you any intention or design of defrauding either the Government of the United States or the State of New York? A. No, sir.

Q. Where did Frank P. Ball from 1896 down to 1903 live? A. Fredonia.

Q. With reference to your home, where did he live? A. I lived on Central avenue running from the Normal School to Dunkirk; he lived on East Main street three quarters of a mile from where I did, or a mile. •

Q. Now after you were a justice of the Supreme Court, how was your railroad transportation purchased? A. At the ticket office.

Q. By whom? A. By myself.



Q. And in what form? A. Tickets to and from Buffalo, which was the place to which I always went in order to get to the other counties except my own county and Cattaraugus.

Q. During the time you were a justice of the Supreme Court was your attention ever attracted in any way to the sign that has been alluded to in this case: Frank P. Ball, Ticket Broker, at Dunkirk, N. Y.? A. I don't remember ever seeing it; I might have seen it; I don't recall having seen it.

Q. During the years he was in the employ of the Federal Government on the payroll of the Postoffice Department, did you or did you not know what he was engaged in doing? A. I did not.

Q. Was any of the payrolls of the Fredonia postoffice ever at any time or in any place until after the institution of this proceeding, brought to your attention or notice? A. No, sir; I never heard of one of them.

Q. Never were told how they were made up? A. No, sir.

Q. Nor whose names were upon them? A. No, sir.

Q. In going from your home to reach any place where you might be called upon to hold court, did you always go to Dunkirk? A. Yes, sir.

Q. How did you go ordinarily? A. There was the trolley between Dunkirk and Fredonia; and I very often drove.

Q. What station did you ordinarily take? A. The Pennsylvania.

Q. How far was that from your house? A. About—a little less than two miles.

Q. Was that the railroad station that you ordinarily took in going to and from Dunkirk? A. Yes, sir.

Q. How far was that from where the evidence locates the ticket office of Ball. A. About half a mile.

Q. His ticket office was near what station? A. The Lake Shore.

Q. That you did not take? A. I took that road occasionally; as a rule I went upon the other road.

Q. Upon occasions when you rode on the trolley from your house to the Philadelphia station or to Dunkirk had you in way

had your attention called to the fact that Ball was a fellow passenger? A. I can't recall whether I saw him on the trolley or not; I might or might not have seen him.

Q. When you were in Congress or after you went upon the bench have you ever assumed or tried to keep track of the details of the management of the postoffices in your congressional district? A. I did not.

Q. In the request that you made for the selection of Frank P. Ball to a place in this postoffice did you believe him to be a man of good repute? A. I did.

Q. Did he have a good reputation in Fredonia and in that locality? A. He did.

Q. Was that also true of Melvin H. Taylor, the postmaster? A. Yes, sir.

Q. Who is Maurice Hooker? A. A nephew of mine.

Q. Prior to the period when he came to Fredonia to attend school where did he live? A. He lived with his father.

Q. Where? A. In the town of Villanova.

Q. Did you upon one occasion have any talk with Maurice in reference to his attending school at Fredonia? A. Yes, sir.

Q. About when? A. I think it was along in the fall before he came down and commenced to go to school.

Q. Can you tell us the substance of that conversation? A. Simply that I suggested to him he ought to go to school at the normal school and he said that he would like to attend; I said to him that possibly I could get him something to do to help him pay his expenses.

Q. What was his father's occupation at that time? A. Farmer.

Q. Was the boy living upon the farm? A. Yes, sir.

Q. Now, who was the then postmaster at Fredonia? A. At that time?

Q. Yes. A. Mr. Taylor.

Q. Came there a time when you had any conversation with Taylor in regard to Maurice Hooker? A. Yes, sir.

Q. What was that talk, if you are able to give it? A. I told him that my nephew, Maurice Hooker, was coming down there to attend school and——

Q. One moment before you go on with that. About when was it in point of time, first? A. I could not tell you, Mr. Stanchfield; it was the latter part of the year 1901, or the forepart of the year 1902.

Q. All right. A. And I wanted to get him something to do, if I could. He said that he wanted to have some one appointed in the postoffice to do the work and wanted to have the office kept nicely and wanted to have some one appointed there to do the work. He thought he could get some school boy to do it and do it nights and mornings. And he suggested that possibly he could get this boy appointed for the position. That is about the substance of the conversation that day that we had.

Q. Then what took place? A. Then he came to me with a letter, which has been offered in evidence here, asking for the appointment and wanted me to endorse his recommendation and transmit it to Washington.

Q. And did you do so? A. I did.

Q. And it was in consequence of that that Maurice was appointed? A. Yes, sir.

Q. Now did you ever have any other or different talk or correspondence with the department at Washington in regard to the securing of this place for Maurice Hooker than is indicated in the letter introduced in evidence here? A. None whatever.

Q. Was there ever any talk between you and Postmaster Taylor that he should be paid or that you should be paid any portion of the salary of Maurice Hooker that might be paid him for services rendered in this position as a laborer? A. There was not.

Q. It seems that Maurice Hooker served until, I think, June, 1903, something like a year and a half. Over that period of time you were a judge? A. Yes, sir.

Q. During that period of time did you know, from your own observation or did any one ever report or say to you, that Maurice Hooker was in fact farming out the duties of his place and was not rendering services at this postoffice? A. No, sir.

Q. Now over these years covered by this controversy where was your office located? A. In the postoffice building; that is, in the village hall in Fredonia, second floor.

Q. I was going to ask you, was it upon the first or second floor?  
A. Second floor.

Q. And how did you ordinarily and usually enter it? A. From the entrance on Temple street.

Q. And by that entrance did or did you not pass along in such a way as to give you a view of who was doing work or engaged in the performance of work in the office? A. No, it was impossible; you could not see any one in there, could not see into the postoffice.

Q. Did or did you not have a box in the postoffice? A. I did.

Q. Who was in the habit of getting your mail? A. The clerks in the office.

Q. What clerks did you have? A. I had a stenographer and a secretary.

Q. And the mailing of correspondence and going after it was ordinarily attended to by them? A. Yes, sir.

Q. Did Maurice Hooker or Taylor or either of them ever say anything to you during the period of time when Maurice Hooker was upon the payroll with reference to the fact that he was not at work? A. Never.

Q. And you say that subject was never brought to your attention? A. Never.

Q. Now there came a time—— A. What I mean by that, until a later period.

Q. I mean during the time he was there? A. Yes, sir.

Q. There came a time, according to this evidence, when you had some talk with Taylor in reference to a demand that had been made by the United States government upon him to pay back to the government the salary that had been paid to Frank P. Ball and Maurice Hooker; about when did that talk, if it ever occurred, take place? A. About the time that Mr. Taylor said they had drawn on him for the repayment of the money.

Q. And when was that, as near as you can state it? A. I should think some time in August.

Q. Of what year? A. Or September. The records show 1903, don't they? I think that is the time.

Q. Now, will you give us, so far as you are able, the conve

tion that you had with Taylor upon that subject; that is, upon the repayment to the government of the salary of Ball and Maurice Hooker? A. Well, we did not have very much conversation at that time; he stopped me one day on the street and said that the inspectors had been there and made an examination of his office.

Q. Speak up as distinctly as you can. A. He stopped me one day on the street in Fredonia and said the inspectors had been there and made an examination of his office and they had discovered some irregularities with reference to payments, and had told him that unless this money was repaid that he would be removed, and also that if there went—if they were paid that probably he could be reappointed. He said he wanted, of course, to be reappointed, and wanted to know what he ought to do. I told him, of course, he knew whether or ought he had done anything that was improper or wrong or irregular in the office, and so far as that was concerned he would have to do as he thought best about it. I was very sorry if there had been any irregularity in the postoffice.

Q. That is the substance of the conversation, as you recollect it? A. That is the substance of the conversation.

Q. Now, it seems from this evidence that afterwards Mr. Taylor did make restitution to the government of the salary that had been paid to Ball and Maurice Hooker. Did you, directly or indirectly, ever pay a dollar of that money? A. Not one dollar.

Q. Were you ever asked to by any one? A. No, sir.

Q. Did you ever promise to pay a dollar of that money? A. I did not.

Q. To any one at any time or any place? A. No, sir.

Q. Now, during the period of time from November 10, 1898, until the election of Mr. Vreeland there was a congressional vacancy in your district? A. Yes, sir.

Q. Were you called upon during that period of time to perform the duties and functions of a Congressman? A. I was, to some extent.

Q. By your constituency? A. Yes, sir.

Q. And did you continue to? A. I did what I thought was proper to assist them; yes, sir.

Q. Now, there came a time when the postoffice at Fredonia was to be put upon the classified list, did there not? A. Yes, sir.

Q. About when was that done? A. In the forepart of the year 1899—it was accomplished at that time.

Q. Now, when you say it was to be put in the classified list of postoffices, what do you mean by that? A. I mean they would have free delivery of mails; and when that time arrived then the office would be called “classified,” under the rules of the department.

Q. And would that mean that there would be, as a necessity of the free delivery of mails, a sufficient corps of letter carriers appointed to do the business of the office? A. Yes, sir; there would be carriers appointed to carry the mail, deliver the mails, to the patrons of the office.

Q. And when classified, that words imports that people who desired to obtain places in the postoffice would be required to pass a civil service examination? A. Yes, sir.

Q. Now sometime before this office was in fact classified, had you been informed of the Federal intention to do it. A. Yes, sir.

Q. Were you requested by certain Republican leaders in that locality to help certain men get appointments in that office? A. Yes, sir.

Q. Now did you undertake to recommend to appointment in that office Henry J. Pepperton, George Cooper, Thomas O’Neil and Ora Caldwell? A. I did.

Q. With whom did you confer at Washington upon that subject? A. The first assistant postmaster-general.

Q. Who was he at that time? A. Heath, Perry S. Heath.

Q. Now, what was the practice in vogue in the department at Washington with reference to securing these appointment to a place, the legality of which at that time was recognized by the Civil Service Commission. A. There were two ways.

MR. COMAN: I object to that, first, that it is incompetent; second, that it does not make the slightest difference what the

practice was, and that the custom, if such custom existed, cannot be established in this way.

MR. FOELKER: Mr. President, we back here are unable to hear the remarks of Mr. Coman, and suggest he speak louder.

THE PRESIDENT: The witness will speak up louder.

THE WITNESS: Yes, sir; I will try and make myself heard.

MR. F. X. WOOD: Mr. President, can the objection be read, please?

MR. STANCHFIELD: Before you rule, I want to be heard.

THE PRESIDENT: I will hear you. The stenographer will read the objection.

(Objection read by the stenographer.)

MR. STANCHFIELD: The crux of this accusation is criminal intent. The charge laid at Judge Hooker's door is that he corruptly secured these appointments with the intention of defrauding the Government of the United States. Now, as bearing upon the question of a criminal and corrupt and unlawful intent, we claim the right to show the practice recognized by the Post-office Department at Washington and the Civil Service Department in securing places in those offices about to be classified. The President will remember that there is before him now a letter from the Civil Service Commission, signed by John R. Proctor, as president, in which he states that this custom of obtaining an appointment to an office about to be classified and that thereby one does not have to pass the civil service, is a legal way of securing appointment to a public place. Now, it is upon the question of the universal recognition of that practice, and it is upon the question of his intent, that we offer this testimony. He has a right to be tried here according to the morals and the customs and the habits of the time in which he lived and served while in Congress. I think it was Lord Bacon who made that remark famous when he was once on trial, that he wanted to be tried according to the customs of his own time and not according to the custom of some ideal time of some other people. And it upon that theory we offer this evidence here, that it is ad-

missible, first, upon the question of intent; -second, it was the practice in vogue in Washington, the legality of which was recognized both by the Civil Service Commission and the Postoffice Department.

THE PRESIDENT: Read the question.

(Question read by the stenographer.)

THE PRESIDENT: I will permit the witness to state what he knows of his own knowledge what the practice was.

MR. STANCHFIELD: Equally satisfactory in that form.

By MR. STANCHFIELD, question. You may answer the question in the form put by the President of the joint session, Judge Hooker.

A. Mr. President, I would have to state my information as obtained from others who were conversant with the facts. I never occupied a position in the Civil Service Commission or held any of the positions in the Postoffice Department or any other department, so my knowledge would come from what I had learned of what was the practice in the department.

THE PRESIDENT: From whom?

THE PRESIDENT: From whom? A. From people who at the time were representatives in Congress and also from people in the departments.

MR. STANCHFIELD: Did you likewise get your information from Mr. Proctor, the President of the Civil Service Commission? A. Yes, sir; talked this case over——

Q. I will get at that later. And likewise did you obtain information upon the subject from the First Assistant Postmaster General? A. I did.

MR. STANCHFIELD: Now I offer the testimony.

THE PRESIDENT: He may state what Mr. Proctor told him and what the First Assistant Postmaster General told him.

THE WITNESS: I went to the First Assistant Postmaster General, Mr. Heath, and told him that I understood that the Fre-



donia office was to go into the classified service; that it was the first office that had been classified in my district since I had been in Congress, and I talked with him with reference to the carriers and as to how they should be appointed—how they could be appointed; I told him I learned from some of my colleagues that they could be appointed as clerks in the office before the office was classified, and after it was classified they could be transferred as carriers. He said that was true, that it had been done and could be done, and I then gave him the names of the persons whom I wanted to have appointed carriers in the Fredonia postoffice.

Q. And those names consisted of whom? A. They consisted of Thomas O'Neil, Pemberton, George Cooper and Ora Caldwell.

Q. And were they subsequently appointed? A. Yes, sir.

Q. Now, in reference to these appointments, did you, upon one occasion, have a talk with John R. Proctor, the President of the Civil Service Commission, in reference to them? A. Yes, sir.

Q. What was that conversation? A. I learned before I went to see him that there had been some criticism upon that way of making the appointments, and I was in Washington and called on him and told him of a conversation that I had had with Mr. Heath with reference to these appointments and how they were made, and he told me that they could be made in that way and transferred, but he suggested that, inasmuch as there had been some criticism with reference to it, that part of them be taken from the classified list—that they have a civil service examination and that part of them be transferred from the postoffice, after the office was classified, as carriers.

Q. And was the suggestion of Mr. Proctor in that respect carried out? A. I think it was, yes, sir; a civil service examination was held as I understand it, at Fredonia.

Q. And the names of Henry R. Pemberton and George Cooper were stricken from the roll? A. Yes, sir.

Q. Ora Caldwell and Thomas O'Neil remained? A. Yes, sir.

Q. Now, of those two, Caldwell and O'Neil, did either of them pass the civil service? A. Mr. Caldwell testified here that he did, or that he took the civil service examination.

Q. Have they both remained in the employ of the Federal Government from the date of their appointment until now? A. Yes, sir; they are now there as I understand it.

Q. And are letter carriers in service now? A. One of them is a letter carrier and the other is a clerk in the postoffice.

Q. Has there ever been made, to your knowledge, any complaint against the ability or capacity of either of them to perform the duties? A. No, sir.

Q. Now, it seems that at the time when the four names whose appointment you requested, were designated to these places, one Minerva Jeffrey, was also directed to be put upon the roster of employees at the Fredonia postoffice. I ask you, Judge Hooker, whether you ever asked Mr. Heath for the appointment of Minerva Jeffrey? A. I did not; no, sir.

Q. Did you ever know Minerva Jeffrey? A. No, sir.

Q. Was she ever put upon the roster at Fredonia by your request or at your instance? A. No, sir.

Q. Did you know at the time where she lived? A. I did not.

Q. Did you ever have any talk with any one in reference to her appointment to a place at Fredonia? A. No, sir.

Q. Now, with reference to the appointment of these four, excluding Minerva Jeffrey, was there any talk between you and Beavers in reference to their appointment, that he should be paid any consideration for it or for any influence that he might exert in that respect?

MR. COMAN: I object until the witness has given the conversation which actually took place between him and Beavers upon that subject.

THE PRESIDENT: The objection is sustained.

MR. STANCHFIELD: Well, will the President pardon me for a moment. I should like an opportunity at least to state my views in regard to it.

THE PRESIDENT: I will hear you.

MR. STANCHFIELD: The question I asked the witness is, was there any talk between him and George W. Beavers by which

he was to be paid any consideration for his assistance in securing the appointment of these four people. Now the accusation is he conspired with George W. Beavers to secure their appointment and defraud the government of the United States. It seems from the witness that the appointment was made and the talk was had with Perry Heath, the First Assistant Postmaster General. Let me ask Mr. Coman to inform you upon what theory he claims that I cannot ask this witness if he had a talk with his alleged co-conspirator by which any promise of money or place was made between them.

THE PRESIDENT: I think you should ask Mr. Stanchfield, first, whether he had any conversation, and if he says he did, ask him what was said in the conversation with reference to the matter; then, he has told all he can remember, then you can ask him the general question whether or not he said so and so.

MR. STANCHFIELD: I suppose as a legal proposition, I don't care to go into that, couldn't I ask him if upon a specific topic he had any conversation with George W. Beavers?

THE PRESIDENT: I think not until you ask him for the conversation, so far as it referred to the matter you wish.

Q. Judge Hooker, did you ever have any talk with George W. Beavers in reference to the appointment of Pemberton, Cooper, O'Neil and Caldwell? A. I don't think I ever had a word with him.

Q. Now, Mr. President, I repeat my inquiry. Did you ever have any talk with George W. Beavers in reference to the appointment of these four men to place, in which you promised him any consideration for any assistance that he might render in securing the appointment? A. No, sir.

Q. Was there ever a word upon the subject? A. Not a word.

Q. In what you did to secure the appointment of these four men by your application to Perry Heath, did you ever intend to defraud either the government of the United States or the State of New York? A. I did not.

Q. With reference to the appointment of any of them, did you ever intend or mean to commit the crime of conspiracy against the Federal government or the State of New York? A. I did not intend to nor did I.

Q. Now, did you in your conduct with reference to the appointment of these people to public place, mean to violate or intend to violate either the spirit or the letter of the Civil Service Laws? A. No, sir.

Q. And when you went to John R. Proctor, president of the Civil Service Commission, was one of your objects in going to comply with whatever he thought was best in the premises? A. Yes, sir.

Q. And did you have in view likewise a desire to find out what was legal in the premises?

MR. COMAN: I object to that as leading, most leading.

THE PRESIDENT: Objection overruled.

A. Yes, sir.

Q. Who is Katherine K. Clark? A. She is a clerk in the post-office at Fredonia.

Q. What is her relationship to Melvin H. Taylor? A. She is a niece of his wife as I understand.

Q. Came there a time when a request was made to you by Taylor in regard to Katherine K. Clark? A. Yes, sir.

Q. Will you tell me about when it was? A. Well, I couldn't tell, Mr. Stanchfield, it appears somewhere in the latter part of 1899 I should think.

Q. Did you have a talk with Taylor in reference to it? A. Yes, sir.

Q. What was it? He said to me that he wanted to have his niece, his wife's niece, Kittie Clark appointed as his money order clerk, that he needed her and would I see if I could aid him in having her appointed.

Q. What did you do? A. Well, I ascertained that there was an office that was about to be classified, Fort Plains, and I ascertained this in conversation with my friend Sherman, and I wrote

to him or to Beavers asking that she be appointed there before that office was classified so that she might be classified there and then transferred to Fredonia.

Q. And was that done? A. Yes, sir.

Q. Now, it seems from this evidence that letters from time to time were written by the postmaster, Taylor, calling for increases in the salary of Katherine K. Clark. I wish to ask you, Judge Hooker, whether you ever knew of such requests, or yourself asked them? A. I didn't know anything about them, nor did I ask them.

Q. Now, there appears here in evidence a letter in which you wrote the department at Washington in reference to having a check sent Katherine K. Clark for her salary while appointed at Fort Plain office. How did you happen to write that letter? A. I will tell you. Mr. Taylor came to me and was very anxious to have Miss Clark transferred to Fredonia and he asked me if I wouldn't write and secure her transfer, and he said she thought she was entitled to some compensation since she was appointed and would I write the letter or write about it, and I wrote the letter that has been offered in evidence.

Q. And is that the same letter across which Mr. Beavers has written the inquiry "has she performed service?" A. I think that is the same one.

Q. Now did you at that time know anything about what Katherine K. Clark had been doing? A. Not the slightest.

Q. Were you told; was your attention called to that fact in any way? A. No, sir.

Q. Now after her appointment and from that time on until the present she has remained in the employ of the postoffice department? A. Yes, sir; I think she is there now.

Q. At Fredonia? A. Yes, sir.

Q. Were you ever promised or paid any consideration by Taylor to secure her appointment? A. I was not. •

Q. Did you ever have any talk with Beavers to the effect that you would make him any return, financial or otherwise, in consideration of services rendered in securing her appointment? A. Not the slightest.

Q. In what you did, Judge Hooker, in reference to securing the appointment of Katherine K. Clark, did you intend to commit either the crime of conspiracy against the government of the United States or the State of New York, or to defraud the government of any money? A. I did not.

Q. There came a time, from this evidence, when you became the joint owner with Lester Stearns of some real estate in the city of Dunkirk? A. Yes, sir.

Q. Upon which was erected the postoffice building, so-called? A. Yes, sir.

Q. And during the progress of this inquiry have you listened to the testimony that has been introduced with reference to the action of Charles T. Wirtner against the city of Dunkirk, Lester F. Stearns and yourself? A. I have.

Q. I want to ask you, was the summons and complaint in that action ever served upon you personally? A. It was not.

Q. How did you appear in the case? A. By—from the record by Mr. Warner as attorney for Stearns and Hooker.

Q. In other words, by a voluntary appearance? A. Yes, sir.

Q. Did you ever go to the office of Mr. Stearns after this action was brought for the purpose of talking it over? A. Yes, sir.

Q. Who apprised you of the fact that a suit had been brought? A. Mr. Stearns.

Q. And about how soon after the commencement of it did you go to Dunkirk? A. Well, I could not say, but within a few days after I had learned it was commenced.

Q. When you were over there do you recollect what you and Mr. Stearns talked about? A. Yes, sir, to some extent; yes, sir.

Q. Tell us as well as you are able? A. This is the way it happened. He telephoned me one day and said that we had been sued in a taxpayer's action, and wanted to know—I asked him who had sued us, and he said Jacob Wirtner, and wanted to know if I would not come down to Dunkirk; and I said I would. And we agreed upon a time when I should come down; and I went down to his office and there I found him and his two partners, Mr. Warner and Mr. Farnham, and there we talked

about the case generally and about the proceedings that had been had before the common council before that time. I think I spent possibly from a half an hour to an hour there.

Q. Now upon that occasion was any answer dictated or drawn?

A. Oh, no answer; all that was said about the answer was this, at the conclusion of our conference there I talked with Mr. Warner, and Mr. Warner said that he would prepare an answer.

Q. Do you remember whether the complaint was there or not?

A. I could not say, Mr. Stanchfield, whether it was or not.

Q. You are certain that no answer was drawn at that time?

A. Oh, absolutely; not a paper was drawn or drafted or thought of that day or suggested or started to be prepared.

Q. Now did you ever see the answer in that action the findings of fact or the conclusions of law, until the judgment roll was offered before the Assembly Judiciary Committee last spring? A. Not until about that time.

Q. That was the first time you ever saw them? A. That was the first time I ever saw them. I never saw the original of either of them.

Q. Now it appears here that you had some conversation with Mr. Stearns in reference to having some judge in Buffalo try this case, will you give what that conversation was? A. Well, with Mr. Stearns?

Q. Yes. A. I think he called me up and said he wished I would speak to some of my associates in Buffalo to hear that case; that they had reached some sort of an arrangement, and they wanted to take the evidence and try it. He said that White had heard the application for an injunction, and suggested that possibly he would hear it; and that was about all that was said.

Q. Then what did you do? A. When I was in Buffalo the next time I spoke to Judge White about it.

Q. What did you say to him? A. I said to him in substance that they were coming down from Dunkirk in an action in which I was personally interested, and I asked him if he would not hear it.

Q. What did he say? A. He said he would.

Q. Is that all the conversation you have had with Judge White upon the subject of that litigation? A. Yes, sir; I think it is all that ever passed between us in any way, shape or form.

Q. Did you ever attempt, at any time or place, either to inform him of the facts involved in the controversy or in any way to influence the trial or judgment that might be rendered? A. No, sir.

Q. When the evidence was in fact taken in Buffalo, where were you holding court? A. Mayville.

Q. That is in Chautauqua county? A. Yes, sir; that is the county seat of Chautauqua county.

Q. And no proceedings, of course, in that action could have been had before you? A. No, sir.

Q. How many days were you holding court at Mayville at that time? A. I cannot remember, but probably a week.

Q. Have you related now, all the connection that you ever had with the Wirtner judgment down to that period? A. Down to that period, yes, sir.

Q. Did you hold all of this term at Mayville? A. Yes, sir. Held court until it was adjourned.

Q. In other words, did you hold part of the term and Kruse the other part, or hold it all? A. No, sir; I exchanged with Judge Kruse. That was his term.

Q. And you held the whole of it? A. Yes.

Q. When was your attention first brought to the fact that the plaintiff had decided not to contest the case or go ahead with it seriously? A. In one of the conversations with Mr. Stearns over the telephone.

Q. What was your first conversation with Mr. Stearns in reference to getting some one to hear this case in Buffalo? A. I just stated it.

Q. State it again. A. That he said they had decided that—Wirtner had decided that he would quit in that litigation, and that they wanted to take the evidence before some judge and wanted me to get some one in—some one of my associates to hear the case.



Q. Well, what else? A. That is about the substance of it; that Judge White heard the application for an injunction in the case and possibly he would hear it.

Q. Now came there a time when you were requested to sign a stipulation vacating this judgment and setting it aside? A. Yes, sir.

Q. Who brought that to your attention? A. Mr. Wade first talked with me about it, but the matter of the stipulation was brought to my attention first by Mr. Stearns and then by Mr. Towne.

Q. And did they give any particular reason why it was desirable that you should sign it? A. That Judge White wanted it to satisfy his conscience, or something of that kind.

Q. And did you finally sign it? A. I did.

Q. Now in any of your relations to or with this action did you ever intend to obtain, in connivance or conspiracy with Lester F. Stearns, a fraudulent judgment against the city of Dunkirk? A. I did not.

Q. Did you ever have any other or different connection with it from what you have testified to here? A. None whatever.

Q. Judge Hooker, at the request of a member who was not here last night, will you give me, if you can, the date when Mr. Abbey died? A. September 11, 1894.

Q. During the period when these various payments were made did you yourself have knowledge as to the requirements of the office at Fredonia? A. I did not.

Q. You were not familiar with the details of its management? A. No sir.

MR. STANCHFIELD: You may cross-examine.

CROSS-EXAMINATION by MR. COMAN:

Q. Judge Hooker, you have spoken upon your direct examination of a custom which prevailed, that an outgoing member of Congress should retain the control of certain patronage, have you not? A. I think so, yes, sir. Not just in that way.

Q. Will you tell the joint assembly just what that custom was to which you referred? A. I said it was a custom in some of the

districts, some of the Congressional districts throughout the country, to permit a former representative in Congress to have something to do with the patronage in his own town, the town in which he lived.

Q. And had that custom prevailed in your district? A. Oh, to some extent, yes.

Q. And did it prevail in your own case when you retired from Congress? A. Well, to some extent, yes, sir.

Q. Was that custom based on the action of the authorities at Washington or an arrangement between the out-going and incoming Congressman? A. I think on both, the individuals used to claim the right to have something to say about patronage, and the department would say it would be a nice thing to do to let the former representative have something to say with reference to the patronage.

Q. As matter of fact you did control the appointments in both the Fredonia and Dunkirk offices for a considerable period of time after you went upon the bench, did you not? A. I won't say controlled, I told you what I did with reference to it.

Q. You recommended the appointment of Frank P. Ball, did you not? A. Yes, sir.

Q. You recommended rather a change in his designation from laborer to clerk? A. Yes, sir.

Q. You recommended the appointment of Maurice Hooker? A. Yes, sir.

Q. You recommended the appointment of Henry J. Pemberton, Ora Caldwell, George Cooper and Thomas O'Neil? A. Yes, sir.

Q. You recommended the appointment of Katherine Clark? A. Yes, sir.

Q. Do you know of any other appointments that have been made in that office since you retired from Congress? A. I don't know, no, sir. ●

Q. Excepting the appointment of Minerva Jeffrey, do you know of any other? A. I don't recall now.

Q. Do you know of any other instance in which this custom has

prevailed where the outgoing member of Congress had been elevated to the bench of the Supreme Court? A. Yes, sir.

Q. Where? A. In that same Congressional District.

Q. And how long ago? A. While I was in Congress.

Q. And who was it? A. Hamilton Ward.

Q. Did Hamilton Ward retire from Congress to go upon the bench? A. Oh, no, he was a former member of Congress, but he went on the bench afterwards.

Q. But not from Congress, he did not go from Congress upon the bench? A. No, not directly, no, sir.

Q. Do I understand you, Judge Hooker, that you wish the assembly to understand—the joint assembly—that you were or were not, familiar with the details of the Fredonia postoffice with reference to the number of clerks employed and the names of those clerks at the time when you retired from Congress.

THE WITNESS: Just repeat that, Mr. Coman.

MR. COMAN: Will the stenographer read the question? (Question read by stenographer.) A. I wish them to understand I had nothing whatever to do with it, and was not familiar with it—with the details of the office in any way, shape or form.

Q. Was there a clerk in the office who had not been appointed at your suggestion? A. You have the list,—they were back there, way back, I don't know when they were appointed.

Q. Can you say whether there was or was not a single clerk in the office who had not been appointed at your suggestion? A. I should presume there were.

Q. Can you name one? A. At what time, Mr. Coman?

Q. I mean at the time when you retired from Congress, Judge. A. There were several of them.

Q. Will you name them? A. Yes, sir; Charles H. Landers, it appears he was there; Edwin Easton; I think Mrs. Moore was in there when I retired from Congress; that was the record.

Q. You knew all those people, did you not, Judge? A. Yes, sir.

Q. You knew Landers and Easton well, didn't you? A. Pretty well, yes, sir.

Q. You afterwards recommended an increase in their salary to the department, did you not. Yes, sir.

Q. After you became Justice of the Supreme Court? A. Yes, sir.

Q. But with the details of the office you were not at all familiar? A. Not at all, no, sir.

Q. Will you tell me, that being so, how you came to request the Postmaster-General to send to this office four letter boxes and six paper boxes? A. When do you mean, in that letter, the postscript to the letter?

Q. Yes. A. Why, yes, sir, Mr. Taylor said, after the letter had been written, "Won't you just add there to send on something for the office?" I said, "State whatever it is and we will put it down." That was all.

Q. In 1896 you were familiar with the venture into which your wife and Ball and other persons entered with reference to the West Virginia oil transaction, were you not? A. Somewhat, by information.

Q. To what extent were you familiar with it? A. What I was told about it by others.

Q. Did you advise with your wife concerning it? A. Yes, sir.

Q. Did you talk with Fred Green about it? A. I presume I did.

Q. Did you talk with Mr. Baker about it? A. I think I did.

Q. And you talked with Ball about it, did you not? A. Yes, sir.

Q. And you knew that Mr. Ball borrowed the money with which to make his payment upon the purchase price, did you not? A. Yes, sir.

Q. You knew that he borrowed it at the Fredonia National Bank? A. Yes, sir.

Q. And that yourself and Mrs. Hooker endorsed the note upon which he borrowed the money? A. I know she endorsed it and I told you what I understood about my endorsement.

Q. Do I understand you that you have no recollection as to whether or not you endorsed it? A. No, I have none whatever.

Q. Did you learn that the oil venture was not profitable? A. Yes, sir.

Q. And how soon after the date of this original note in 1896 did you learn that fact? A. I can't tell you just how soon, but within a period of a few months afterward.

Q. And did you learn that it had become necessary for the different partners in the enterprise to put in additional money to cover the expenses and the losses? A. Yes, sir.

Q. Did you learn that in order to pay his share it became necessary for Mr. Ball to borrow more money? A. Yes, sir.

Q. How much? A. Well, the record shows how much he borrowed.

Q. I want your recollection about that. A. I knew about that.

Q. What is that? A. I knew about the increasing of the note up to \$3,000.

Q. And when was the note increased to \$3,000 or \$3,085? A. I couldn't state to you definitely when the note was first made for that amount. The record shows.

Q. It appears upon the records in this case that that was the 10th day of September, 1898? A. Yes.

Q. Would that be about your recollection? A. Well, I should think so, yes, sir.

Q. Now sometime between the 10th day of September, 1898, the day on which this note bore date, and the 11th day of October, you had a talk with Arthur Moore, did you not, about Ball? A. I don't remember the time.

Q. It appears that Mr. Ball was appointed to a position in the Fredonia office on the 11th day of October, just 31 days after the date of this note. Between those two dates did you have a talk with Arthur Moore, the postmaster at Fredonia, concerning Ball's appointment to a position? A. I can't say whether it was then or before that time. I should as soon think it was before that time, long before that time.

Q. Judge, I beg your pardon. I did not hear you. A. Well, I will try and make myself heard. I couldn't say as to the exact time that I had the conversation with Mr. Moore.

Q. Give us your best recollection as to the time with reference to the date of this appointment. How soon after you had the talk with Arthur Moore would you think he was appointed?

A. Well, I couldn't tell you that.

Q. Can't you give us some idea? A. No, sir; I have nothing to—— I couldn't say when it was.

Q. Well, do you think it was a year. A. Oh, I wouldn't think so; no, sir. It was sometime during that year of 1898.

Q. Were you aware of the fact that during the year 1898, or a portion of the year 1898 at least, Mr. Ball was out of business?

A. He said so; he said so in his——

Q. He said so to you, did he? A. No; he said so in evidence here.

Q. O, yes. But were you aware of it at the time? A. I might have known it; I don't recall.

Q. Were you familiar with the fact that the Legislature passed what was know as the anti-scalping law? A. I read of it, yes, sir.

Q. And you knew at the time that it took effect on the first day of September, 1897, did you not? A. Well, I probably knew of it at the time. I can't recall now the date at which it took effect.

Q. Do you recall that at the time when the Court of Appeals decided that this law was unconstitutional and void that fact was called to your attention? A. Well, I can't recall that fact, but I presume I read of it at the time, Mr. Coman.

Q. And did that fact in any way remind you of the fact that Ball had been engaged in the ticket brokerage business at Dunkirk and had gone out of it because of the passage of this act? A. Not that fact of itself wouldn't.

Q. Did any fact bring that to your attention? A. Well, I don't remember as to that.

Q. When did you first learn that Mr. Ball had resumed the ticket brokerage business at Dunkirk? A. I couldn't tell you.

Q. Have you any recollection upon that subject? A. I don't know when he did do it, Mr. Coman.

Q. You don't know when he did it? A. I don't know when he resumed the business in Dunkirk.

Q. Did you at sometime learn that he had resumed business there? A. O, I presume I did; yes, sir.

Q. Can you tell us about when that was? A. No, sir; I couldn't tell you when it was.

Q. You can't tell us when it was? A. No, sir.

Q. Can you tell us approximately when it was? A. Well, you can say sometime between when he commenced the business and when he closed it, I might have learned it.

Q. Do you know whether you learned it during the year 1899 or not? A. I couldn't answer.

Q. Or 1900? A. I couldn't answer.

Q. Or 1901. A. I couldn't.

Q. Or at any time before Mr. Ball resigned from the Fredonia postoffice? A. No, sir.

Q. You had a great interest in Frank Ball didn't you? A. Yes, sir.

Q. Will you tell us what that interest was? A. The interest that one friend has in another.

Q. Tell us what your relations with Frank Ball were that created this great interest? A. I say I was friendly with him and had been and knew his family, father and mother and all the members of the family, and that was my great interest in him, If you refer to that expression I used in the letter.

Q. You lived in the same community with him? A. Yes, sir.

Q. During the four years that he was upon the pay rolls of the Fredonia office? A. Yes, sir.

Q. Your office during all of that time and for many years prior was in the same building with the Fredonia postoffice? A. Yes, sir.

Q. And yet during that entire period of time you did not know whether Ball was engaged in the ticket brokerage business at Dunkirk or was working in the Fredonia postoffice or what he was doing? A. I did not.

Q. Did you ever meet Ball during those years? A. Did I ever meet him?

Q. Yes. A. O, I think I have; yes, sir.

Q. When you met Ball in what way did you manifest your great interest in him? Did you have conversations with him? A. O, I have no doubt that I did; yes, sir.

Q. Did you ask him how he was getting along? A. Quite likely.

Q. What business he was engaged in? A. I don't know that I did.

Q. Have you any recollection of any given conversation with Ball during that period of four years? A. No, sir.

Q. Whenever the first conversation between you and Arthur Moore took place, are you able to tell us where it took place? A. Why, somewhere in Fredonia.

Q. Was it in the postoffice? A. I don't think so, I think I seen him on the street somewhere.

Q. You don't think you went to see him about Ball? A. No, sir.

Q. But you met him on the street? A. No, I think it was a casual conversation somewhere in town.

Q. What did you say to him? A. Why, I think I mentioned the fact that Frank Ball wanted to get something to do and I thought maybe that I could get him some position in the post-office at Fredonia.

Q. At that time had you had any communication with the postal authorities at Washington on the subject? A. Not the slightest.

Q. Have you told us all the conversation with Moore that you now remember? A. All that I now recall.

Q. Was there anything said about what duties Ball was to perform in the Fredonia office? A. No.

Q. Did you ask Mr. Moore whether there was any vacancy in the Fredonia office? A. Vacancy?

Q. Yes. A. No, sir.



Q. Did you ask him whether there was anything for Ball to do there? A. No.

Q. How soon after your conversation with Mr. Moore did you go to Washington? A. Well, I couldn't tell you, Mr. Coman, sometime after the conversation and before the appointment was made.

Q. And you say that you had a conversation with Perry Heath? A. Yes, sir.

Q. Did you in the course of your conversation with Perry Heath say anything on the subject of what duties Mr. Ball was to perform at Fredonia? A. No, sir.

Q. Or as to whether he was to perform any or not? A. Oh, he knew what there was to do at Fredonia, Mr. Heath did.

Q. Did Mr. Heath say he knew what there was to do at Fredonia? A. No.

Q. Was anything said as to whether he was to be appointed a laborer or not? A. He was to have some position in the office, that is what I asked him for.

Q. Some position? A. Position in the office.

Q. Not specifying any position? A. Without specifying any position, I left it to him to indicate the position.

Q. When it came around that the Fredonia postoffice was to be classified then you requested that Ball's designation be changed, did you not? A. I made the request that has been offered in evidence here.

Q. Did you request that? A. Whatever there is in the letter I made of the department.

Q. You had had your prior conversation concerning Ball with Perry Heath? A. Yes.

Q. Why didn't you write Perry Heath about this change of designation? A. I don't recall now why I didn't.

Q. You knew that he was at the head of that department, didn't you? A. Oh, yes.

Q. And that Beavers was his subordinate? A. Yes.

Q. Did you or did you not know that the rules of the postal department required that all communications upon the subject

of clerk hire and leases should be addressed to the first assistant?

A. Did I know it?

Q. Yes. A. I know this——

Q. (Interrupting.) Did you know that, judge. A. Oh, you want me to answer that. I don't think it had ever been called to my attention.

Q. Well, are you able to give us any reason why you addressed this letter to Beavers instead of to Heath? A. Why nothing, except that I simply wrote it to him, that is all.

Q. I beg your pardon? A. No particular reason except that he had charge of the matters, he was the one to make the initiative in the appointments.

Q. Had you recently been in Washington at the time when you wrote this letter to Beavers? A. I presume I had.

Q. In this letter you say, "If I remember it we talked that matter over before I left Washington," speaking of the Ball matter? A. Yes.

Q. Did you talk the matter over with Beavers? A. Quite likely.

Q. Do you remember whether you did or not? A. I have no recollection of it aside from that letter you call my attention to.

Q. You have no recollection of the conversation you had with Beavers? A. No, except as that refreshes it.

Q. Well, does that refresh you so you are able to give us any part of the conversation? A. O, no.

Q. You say, "On my return home I find your letter concerning the matter of Frank B. Ball in the Fredonia postoffice"? A. Yes.

Q. Where is that letter? A. I gave it to Mr. Ball.

Q. You gave Beavers letter to Ball? A. Yes.

Q. What was that letter? A. I don't remember the contents of it, something about it.

Q. Do you know where that letter is now? A. No, sir.

Q. Do you know where any of the various letters are which you received from Beavers during the years 1898 to 1903 inclusive? A. No, sir.

Q. Have you made any search for any of those letters? A. I will tell you Mr. Coman, when I received any letter from any

one in a department with reference to any subject matter that interested any particular individual I sent the letter to the individual and so that letter was sent to Ball as the others were. I have had thousands of letters from the department and simply sent them to the parties interested in them and that is the way they were disposed of.

Q. Do I understand you do not retain in your custody any letters you received from Beavers? A. Not that concerned any person wanting a position or any other matter in which they were interested.

Q. Did you keep copies of the letters you sent to Beavers? A. No, sir.

Q. Do you keep copies of your correspondence? Are you in the habit of keeping letter press copies? A. No, sir.

Q. Never have been? A. Never kept but very little copies of the correspondence, particularly since I went on the bench.

Q. Come down to the time when a settlement was made with the Fredonia National Bank and preliminary to that I will ask you who was the cashier of the Fredonia National Bank? A. It appears from the record that Mr. Greene was at that time.

Q. During what period of time? A. I can't recall.

Q. During all of the period of time covered by any of these charges he was cashier? A. I think so.

Q. You were familiar with the conduct of that bank, the manner in which it was conducted? A. No, not in the slightest to do with the conduct of it.

Q. Your wife was a shareholder? A. A stockholder; yes, sir.

Q. Her sister was a shareholder in it? A. Yes, sir, a stockholder.

Q. They were the largest shareholders, weren't they, in the bank? A. No, sir.

Q. They were large, had a large interest? A. They had \$4,500 each, call that large or small, whatever way you may look at it.

Q. You were a depositor in that bank during all of this time? A. I did business there.

Q. You had notes discounted there? A. Yes, sir.

Q. And you were there frequently? A. What do you mean by frequently—I was there occasionally.

Q. Mr. Greene was an intimate personal and political friend of yours was he not? A. Yes, sir.

Q. And did you or did you not have conferences with Mr. Greene both upon business and political matters? A. Oh, yes; yes, sir.

Q. Did some of those conferences take place at the bank? A. Once in a while, yes sir.

Q. And yet you say you were wholly unfamiliar with the manner in which the business of the bank was conducted? A. I do not know what you mean by that. I knew how they did their business daily by people coming in and depositing money and having work done.

Q. Do you know who had the management and personal supervision of the affairs of that bank? A. When?

Q. During the years from 1898 until 1903? A. Mr. Greene, cashier, and Mr. Hill the president.

Q. Who was the active manager? A. Mr. Greene, more than anyone else I think.

Q. When you came to make this settlement with the bank I suppose it was preceded by some negotiations? A. Yes, sir.

Q. It was a matter of large interest to yourself was it not? A. Yes, sir, somewhat.

Q. As well as to your wife? A. Yes, sir.

Q. You say it was a matter of somewhat interest to you? A. Yes, sir.

Q. What do you mean by that? A. I mean of some importance to me.

Q. Some considerable importance was it not? A. You may call it so.

Q. You had \$30,000 in notes at the bank? A. Yes, sir.

Q. And your wife some? A. Yes, sir.

Q. And besides other notes on which she was liable including the Ball note? A. Yes, sir.

Q. Who conducted the negotiations that led up to that settlement? A. I did for Mrs. Hooker and myself, I presume.

Q. With whom? A. With Mr. Hall, Mr. Greene, and Mr. Fenner, and I think O. W. Johnson.

Q. Was anything said about the Ball note? A. Not a word, except Mrs. Hooker was to be released on it as endorser.

Q. Was there anything said about the amount? A. I think so, I think it was stated in some resolution, if I remember right, or some paper.

Q. It was stated in the resolution that the amount of the note was about \$2,600? A. I would not say as to that.

Q. Did it come to your attention that the note had been reduced from that amount of \$3,000? A. I knew at the time that the note was made for \$3,000 and I knew at the time that she was released from as endorser upon it, knew the amount of it at that time.

Q. What was the amount? A. At the time she was released?

Q. Yes? A. Something less than \$3,000.

Q. How much less? A. A few hundred dollars less.

Q. The amount of it of course was brought up and discussed, was it not, between you and Greene? A. It was discussed by some of us there.

Q. What was said about it? A. I told you, that she should be released from liability as endorser.

Q. What was said about the amount of the note? A. I don't remember as the amount was mentioned, any way whatever, she was to be released as endorser.

Q. Didn't it make any difference in this settlement just what the amount of any of these notes were, wasn't it all brought up there and the amounts stated and considered in these negotiations? A. Quite likely they were.

Q. Do you remember whether they were? A. I did not hear it about the Ball notes as well as the other notes on which she was released.

Q. Tell us what you and Greene said in reference to that note? A. The conversation with Greene was the same as it was with Fenner and Mr. Ralph Hill and Mr. O. W. Johnson; our proposi-

tion was that she was to turn over certain property and she was to be released from all liability as endorser in the bank including this Ball note, the note of Empky and the Lang note.

Q. Was any reference made to the fact of Ball's making payments upon this note with regularity? A. No, sir.

Q. Was it ever stated by him or Enthe that he was to pay \$150 upon this note every time it was renewed? A. Not a word said about it.

Q. And that fact was in no way ever brought to your attention? A. Not the slightest, by no person directly or indirectly.

Q. After the appointment of Ball to a position in the Fredonia postoffice, who was the next person that you recommended? A. I don't remember who was; the records will show as to the dates.

Q. Do you remember being in Washington the 9th day of January, 1899? A. Well, I don't just remember being there at that date. I presume quite likely I was there. I think that is the date when you introduced some newspaper articles to show that I was there.

Q. Yes. A. I don't question being there the slightest, never have.

Q. Who did you have a talk with at that time concerning appointments in the Fredonia postoffice? A. Why, I couldn't recall.

Q. Concerning the appointment of Caldwell, Pemberton, O'Neil and Cooper? A. Oh, about that time I had a talk with Heath.

Q. With Mr. Heath? A. Yes, sir.

Q. Did you have any talk with Beavers at that time? A. I couldn't recall any.

Q. In your letter of January 16th to Beavers you refer to a conversation had with him at Washington. A. Yes, sir.

Q. Does that refer to a conversation you had with him when you were in Washington on the 9th of the same month? A. Suppose you read it.

Q. The week preceding (reading) "Fredonia, January 16, 1899, Dear Beavers: On my return home I find your letter concerning the matter of Frank P. Ball of the Fredonia postoffice. If I

remember, we talked the matter over before we left Washington, but for fear we did not, I suggest that I have a great interest in Mr. Ball, and want to have him retained in the classified service if possible." A. Now, what is your question, Mr. Coman?

Q. Now, the question is whether or not you had a talk with Beavers while you were in Washington on this occasion spoken of the 9th of January? A. I might have had one, yes.

Q. Did you have one? A. I have no recollection of it now.

Q. You refer to such a conversation in this letter, do you not?

A. You might interpret it that way, or might not.

Q. How might it otherwise be interpreted, Judge? A. You asked me in regard to a conversation with reference to these four appointments.

Q. I asked you whether you had any conversation with Beavers during your visit to Washington on the 9th of January? A. I may have had some conversation.

Q. Is that all you can say? A. That is all I can say, yes, sir.

Q. You have no recollection whatever about it? A. No, sir.

Q. You did have a conversation with Heath, you say? A. Yes, sir.

Q. What was that about? A. That was about the appointment of the carriers in the postoffice.

Q. Now, upon the files at Washington was found this memorandum, which is Exhibit No. 18: "Fredonia, N. Y. Free Delivery. Thomas O'Neil, Henry J. Pemberton, George Cooper, Minerva Jeffrey, at \$600; Oma Caldwell, one mounted." And upon that memorandum are the words "Sawyer File" in the handwriting of Beavers. Does that refresh your recollection any as to whether or not you had a conversation with Beavers on that subject? A. Not the slightest. That is easily explained.

Q. You explain it, please. A. Why, Heath could have sent the memorandum right down to Beavers, and Beavers made a memorandum on it, and made out the appointments, and then it would go back and be signed by Heath. Beavers could not make any appointments of his own motion at all. It had to be signed by his superior officer.

Q. Now, in that conversation, you recommended the appoint-

ment of these four people, did you, to the Fredonia office? A. How is that?

Q. You recommended the appointment of O'Neil, Pemberton, Cooper and Caldwell to positions in the Fredonia office, did you? A. I think so, yes, sir.

Q. Was anything said about when their appointments were to take effect? A. I don't think there was.

Q. Was the probable time of the classification of the Fredonia office fixed at that time? A. No, they would not fix it at that, I don't think.

Q. As a matter of fact, when was it fixed? A. Some time later in the year; I think the record shows about the first of April.

Q. First day of April? A. About that time.

Q. Now, it seems that shortly after this time the names of Pemberton and Cooper were stricken off of the roll. Do you know how that happened? A. I do not.

Q. Did you have a conversation with somebody, testified to on the direct examination on that subject, on the subject of Caldwell and O'Neil being retained on the roll and Pemberton and Cooper being stricken off? A. I never knew about their being stricken off.

Q. What was your conversation with Proctor? A. I went to talk with him with reference to what had been done in the office.

Q. Yes. And the result of that conversation was, was it not, that a part of these carriers were to be taken from the civil service list and a part from those on the list at the time when the office was classified? A. Yes, sir.

Q. Now, as a result of that conversation, did you make any recommendation to the postoffice department on that subject? A. Did I.

Q. Yes, sir. A. I don't think I did.

Q. Do you know how the postoffice department came to select Pemberton and Cooper instead of Caldwell and O'Neil to be stricken off from the rolls of the office? A. How they came to do that?



Q. Yes. A. I think I do, that is, I know how O'Neil's appointment was made.

Q. Tell us. A. Well, that was right there. I told him that if any were kept I wanted Q'Neil kept as carrier and transferred; that is, I wanted him transferred when the office was classified, I wanted him transferred and made one of the carriers.

Q. Anybody else? A. That is all I said to him about it.

Q. Was anything said to him about Caldwell? A. No.

Q. Do you know how Caldwell came to be retained when Pemberton and Cooper were stricken off the roll? A. I do not.

Q. Do you know of anybody in the postoffice department that knew these people or had ever heard of them? A. Do you mean at Washington?

Q. Yes. A. No, sir.

Q. Do you know of anybody who was interfering in any way with the patronage of the Fredonia office? A. No.

Q. Your heard Congressman Vreeland testified that he never had anything to do with it? A. I did.

Q. Down to this day, or down to the day when he testified? A. I did.

Q. And so far as you know that is true, is it not? A. Yes, sir.

Q. That he has never recommended any appointments either in the Fredonia or Dunkirk offices? A. Well, he went up to the department with me and told the department that whatever I wanted to have done at the Fredonia office was all right; so I did not do a thing without his concurrence.

Q. Exactly? A. Not the slightest.

Q. It was then understood between you and Mr. Vreeland that you were to control the patronage of those two offices? A. Control it, or whatever you see fit to term it, yes, sir.

Q. And you thought that that was a proper thing for a justice of the Supreme Court to do, didn't you? A. What?

Q. To be engaged in dictating and directing the patronage of postoffices and recommending men to the positions in them? A. I thought that what I did in connection with it, Mr. Coman, was entirely proper.

Q. You thought that in a general way, that it was proper for a justice of the Supreme Court to be the dictator of the patronage of the two postoffices? A. Oh, no; I don't say that. I said that what I did was entirely proper, and I have done nothing that was improper or wrong in connection with the matter, in my recommendations.

Q. Now, judge, will you answer my question, please. Do you think that it was proper for you, a justice of the Supreme Court, to be in control and to be the dictator of the patronage of the Fredonia and Dunkirk postoffices? A. That was not the condition of affairs, so I don't think the question was a fair one.

Q. If you don't wish to answer it—— A. O, no, I don't say that.

Q. Are you willing to answer it? A. I am willing to answer any question.

Q. Then if the stenographer will repeat my question I wish you would answer it.

(Question repeated as follows: Did you think that it was proper for you a justice of the Supreme Court to be in control and to be the dictator of the patronage of the Fredonia and Dunkirk postoffices?)

A. My answer to that is that I was not the dictator of it and had not the control of it in the sense in which you ask the question.

Q. Who was? A. At what time?

Q. At any time since your appointment to the office of justice of the Supreme Court. A. Why, the Congressman has been in a way.

Q. And yet, the Congressman went with you, you say, to the department and told the department that any recommendations made by you would be satisfactory to him. A. That would show that he was in control rather than I.

Q. And you heard his testimony? That he has never been asked to recommend and never has recommended an appointment in either of those offices since he has been a member of Congress. A. Well, I heard what he said, yes, sir.

Q. And was that true? A. O, he has recommended the appointment of postmasters there.

Q. I am not speaking of postmasters; I am speaking of others. He testified he recommended the appointment of postmasters, did he not? A. I cannot tell what he has recommended.

Q. Do you know of anybody except yourself who has recommended an appointment to a position in either the Fredonia or Dunkirk postoffices since you became a justice of the Supreme Court? A. I don't know whether there have been any changes in the Dunkirk offices or not.

Q. Now, judge, won't you kindly answer that question? A. I will, sir, but you ask me if I know. I say I can't tell whether there have been any changes in there or not in the last two or three years.

Q. You know that there have been many changes in the Fredonia office, don't you? A. I know of the changes that you call my attention to.

Q. And everyone of those has been made on your recommendation? A. I have stated just what my connection with each of them was.

Q. And were they made upon your recommendation, sir? A. Why, my dear sir, I have testified to it half a dozen times, and you have offered proof of it. I can't make it any stronger.

Q. When did you learn that Ball's designation had been changed from laborer to clerk? A. I can't tell you the exact time.

Q. Did Mr. Beavers write you about the time that it was done? A. Quite likely he did. I got some information from the department.

Q. Did you make any inquiry as to whether there was a necessity for the appointment of another laborer in Ball's place? A. No, sir, except—

Q. Except what? A. I say I did not.

Q. You did not. During all the time that you had been a member of Congress there had never been a laborer appointed in

the Fredonia postoffice, had there? A. I think not, no; not to my knowledge.

Q. And there never was another one appointed until Maurice Hooker was appointed, was there? A. Not to my knowledge.

Q. And that was some two years later? A. It appears so, yes, sir.

Q. You knew that if a laborer was to be appointed or had been appointed in the interim of two years, you would have been consulted about it, would you not? A. Why, I would have been quite likely to, yes, sir; might or might not have been.

Q. Do you think that Melvin H. Taylor would have appointed or asked for the appointment of a laborer in the Fredonia postoffice without consulting you? A. Oh, he might have done it.

Q. Would it have been probable? A. I can't tell what would have been probable. He might or might not have done it.

Q. And the year 1902 was it, that Maurice Hooker was appointed? A. I think that is the date of it, yes, sir.

Q. Now you had had a talk with Maurice about getting him some position in the government service, had you not? A. Well, some position, yes.

Q. Some position? A. Yes.

Q. And where did that talk take place? A. Up at his father's house.

Q. When? A. Along some time the year previous to the time that he was appointed.

Q. The year previous? A. Yes, sir; sometime in the fall before that.

Q. His father lived how far from you? A. How far from Fredonia? Oh, I should think about fifteen miles.

Q. And upon a farm you have stated? A. Yes, sir.

Q. Were you over there making your brother a visit? A. Yes, sir.

Q. As a result of that conversation, did you have a talk with Mr. Taylor about—— A. Yes, sir.

Q. About Maurice's appointment to some position in the postoffice? A. Yes, sir.

Q. When was that? A. Some time along in the winter, December or January.

Q. The appointment took place, I think, the 15th of January. When, with reference to that date, was it? A. Well, before that date.

Q. What did you say to Mr. Taylor? A. Well, he came to me, this was substantially the conversation. I told him the boy was coming over there to school and he said that he had had in mind to make a recommendation for some one to do the work in the office; that he wanted to have the office nicely cared for, nicely taken care of, and he thought of some school boy—recommending somebody that would do the work nights and mornings, and that he would recommend Maurice.

Q. You heard Taylor's testimony, didn't you? A. You mean heard it read?

Q. No, heard it given? A. Oh, yes.

Q. Before the committee and heard it read? A. Yes, sir; I think I heard it all. I am not sure though. Taylor was examined one day when I think I was not here.

Q. You now know that Maurice Hooker never performed an hour's service in the Fredonia postoffice, don't you. A. I now know what the record—what has been testified to.

Q. You also know that Frank Ball never performed an hour's service in the Fredonia postoffice during the four years and upwards that he was on the roll, do you not? A. I have heard that in the testimony, yes, sir.

Q. Where did Maurice live during the time that he was attending school at Fredonia? A. On Newton street.

Q. Were you on friendly terms with Maurice? A. Yes, sir.

Q. Did you have an interest in him also? A. I did.

Q. You had an even greater interest in him than you did in Ball, did you not? A. I think I did; I think I should.

Q. How often did you see Maurice during the time that he was attending school? A. Well, I saw him occasionally.

Q. When? A. Why usually on the street.

Q. And did he ever come to your office at all any? A. To the office?

Q. Yes. A. I think very rarely, I don't believe he was ever in the office but once or twice.

Q. He was on friendly terms with yourself and your family, was he not? A. Yes, sir.

Q. Did he come to the house to see them? A. O, occasionally.

Q. When you were there? A. I presume so.

Q. Well, do you remember it? A. I say he used to come to the house occasionally, certainly.

Q. Upon those occasions did you talk with Maurice as to his progress in the school? A. Yes, sir.

Q. And generally as to how he was getting along? A. I presume I did.

Q. Did you at any time inquire how he was getting along with his duties in the postoffice? A. I asked him occasionally how he was getting along and he told me he was getting along all right.

Q. Did you at any time inquire how he was getting along with his duties in the postoffice? A. I didn't ask him how he was getting along with them, no.

Q. Do you know why you didn't ask him that question? A. I will tell you why. When the boy started in to do the work, when he received the appointment, I told him what generally, what as I understood would be the work and that Mr. Taylor had told me that he could do this work nights and mornings and I wanted him to do it, and to do it well. Now, that is what I told him and whenever I would ask him about it, ask him how he was getting along, he would say he was getting along all right.

Q. Had anybody suggested that you tell Maurice how he should do his work, or had anybody suggested that he needn't do it, or shouldn't do it? A. No, sir.

Q. What necessity did you think there was for you to tell Maurice that he must do this work that he was employed to

do? A. Because I wanted him to do it and do it well, attend to his duties,—

Q. (Question interrupting.) And you thought it necessary to say that to him? A. Yes, I thought,—

Q. (Question interrupting.) Did you think it necessary at any time afterwards to interrogate him as to whether he was carrying out those instructions you had given him? A. I think my inquiry covered that.

Q. What was your inquiry? A. I asked him occasionally how he was getting along and he would tell me.

Q. How old was Maurice? A. About eighteen.

Q. At that time? A. Seventeen or eighteen.

Q. Wasn't he sixteen, judge? A. Well, now, you have got his age down exactly from him. You ask me for my recollection and I give you what I think his age is.

Q. He was somewhere between sixteen and eighteen years of age. He was not a strong boy physically, was he? A. Oh, a good strong boy physically.

Q. Is he now? A. Yes.

Q. A good strong boy physically? A. Yes, sir.

Q. You saw him upon the witness stand, did you not? A. Yes, sir, I did.

Q. You are aware numerous members of this assembly saw him? A. Yes, there was some time,—yes, I saw him all the time I think he was there.

Q. You heard him testify? A. Yes, sir.

Q. You now say that at the time mentioned he was a good strong boy? A. Yes, sir.

Q. Physically? A. I think so.

Q. Mentally? A. Well, now, that you must judge for yourself. The boy is bashful, has an impediment in his speech and is a sort of a boy that is very retiring, says very little.

Q. Well, now, judge, how much do you think that a boy like Maurice could earn as a laborer if he devoted his entire time to it in the village of Fredonia? A. Oh, that I wouldn't say.

Q. Have you any opinion upon that subject? A. Well, I don't know.

Q. Well, you don't know? A. No.

Q. Do you think he could earn \$400 a year? A. Well, possibly, possibly not.

Q. Your understanding was when Maurice was appointed that he was to attend the Fredonia Normal School and do this work nights and mornings? A. Yes, sir.

Q. Did the thought arise in your mind or the question as to whether or not that was a fair or honorable arrangement? A. Will you repeat that?

(Stenographer reads question.)

A. What do you mean to refer to, Mr. Coman?

Q. That Maurice Hooker was to be paid \$400 for performing services which he could perform nights and mornings while he was attending school at the Normal School. A. Now, that was a matter, the amount of compensation was a matter to be fixed by the department; I made no suggestion in regard to the amount of compensation.

Q. Do you mean that, Judge Hooker? A. Except as I wrote that letter enclosing Mr. Taylor's with the letter which I wrote.

Q. Except as you wrote a letter asking it be fixed at \$400? A. Did I ask it be fixed at \$400?

Q. Didn't you? A. I think not.

Q. Mr. Taylor wrote a letter which you enclosed to the post-office department asking that his compensation be fixed at \$400, did you not? A. Yes.

Q. And you wrote another letter to the department in which you said you hoped the appointment could be made as requested? A. Yes.

Q. And do you now wish to say you had nothing to do with fixing the amount of his compensation? A. Nothing whatever, except as you read that letter.

Q. When Katherine Clark's appointment was first suggested, who talked with you about it? A. Mr. Taylor.

Q. What did he say? A. He wanted to have Miss Clark appointed as his money order clerk.

Q. Was anything said about the manner in which she would



be appointed? A. I don't remember whether there was anything said upon that or not.

Q. Was it talked that she could not pass the civil service examination? A. I don't think that was talked, no.

Q. What was said judge? A. I just told you, he said he would like to have her appointed as his money order clerk and wanted I should see if it could be done.

Q. Did you tell Taylor that she could be appointed if she could pass the civil service examination? A. I don't think the subject was mentioned. I have no recollection now of it.

Q. How did you come to suggest that she should be first appointed in the Fredonia office? A. Mr. Taylor said there was no board, or something of the kind there, there was no list at that time in the classified service.

Q. The Fredonia office had been classified? A. At that time?

Q. Yes. A. In 1899, December, '99?

Q. Yes. A. Yes, sir.

Q. You wrote to Beavers, did you, on the subject of Katherine Clark's appointment? A. I think I did.

Q. Did you telegraph to Congressman Sherman on the subject? A. You have offered the telegram in evidence; I presume I sent it; I haven't seen the original, so I only have to take your statement.

Q. How did you come to write to Congressman Sherman or telegraph to him about it? A. Because I ascertained there was an office which was going in the classified service and her appointment could be made in that way.

Q. Fort Plains wasn't in Congressman Sherman's district, and never was? A. That is true.

Q. Well, then, what had Congressman Sherman to do with that office? A. I labored under a misapprehension that it was.

Q. And when Congressman Sherman received your telegram, he didn't correct you in that view? A. No, sir.

Q. You were all the time under the misapprehension that Fort Plain was in Congressman Sherman's district? A. That is true for a time, I didn't give it any thought until afterwards.

Q. Now, you telegraphed to Congressman Sherman, did you not: "Let Beavers appoint Miss Clark at Fort Plain so she can be transferred to Fredonia"? A. Yes, sir.

Q. "See me, please." Now, the purpose then for which you wanted Miss Clark appointed at Fort Plain was so that she could be transferred to Fredonia? A. That was the purpose.

Q. And that was what you talked to Taylor? A. Yes.

Q. And she was to be appointed there for the purpose of being transferred to Fredonia? A. Yes.

Q. It never was talked between you and Taylor that she was to go to Fort Plain, was it? A. The subject was never talked about.

Q. It never was talked between you and Congressman Sherman or between you and Beavers that she was to go to Fort Plain? A. Well, that I say—I don't recollect any such conversation.

Q. And the purpose which you had in your mind was to secure her appointment there so that she could be transferred to Fredonia? A. That was the purpose.

Q. Did anyone ever tell you that Katherine Clark had been to Fort Plain? A. No, sir, I don't recall any such conversation.

Q. When Taylor came to ask you to see if you could get her salary, did he tell you she had been to Fort Plain? A. He didn't say anything about it.

Q. Did you inquire whether she had been there or not? A. I don't think I did.

Q. When you wrote this letter to Beavers asking that a check be sent to Katherine Clark did you think that Katherine Clark had been working to Fort Plain? A. Well, I don't know—what do you mean, what I thought about it?

Q. Yes. A. I didn't think anything about it.

Q. You knew enough about the postoffice matters and the manner in which the business of the postoffice was conducted to know that if Katherine Clark had been working at Fort Plain she would have received her pay at Fort Plain, didn't you? A. Well, I didn't give that subject any attention.

Q. You knew that you had asked Mr. Beavers to appoint her additional to the clerks necessary in the Fort Plain office, too, didn't you? A. Yes, sir.

Q. When you requested her appointment additional to the clerks necessary in the office did you think that she was going there to work? A. I didn't know whether she would go there or not.

Q. Did you think she would go there if she was to be appointed additional to those necessary in the office? A. She might or might not go there; I didn't know whether she would go there or not.

Q. When Taylor asked you to write for her check do you say that it did not occur to you to inquire at all whether she had been there or not? A. Why, no.

Q. Didn't it occur to you that if she had been there she would have received her pay from the postmaster on the ground? A. It never occurred to me, that.

THE PRESIDENT: We will suspend at this point.

MR. TULLY: I want to suggest to this joint assembly the advisability of excusing Mr. Wardman from further attendance at this session under the subpoena with which he was served. It develops that the subpoena which was served upon Mr. Wardman and which was substantially the same as that served upon Mr. Hennessy is clearly illegal, in its phraseology at least, and yet Mr. Wardman here in obedience to that subpoena and he has said he had told us all he knew or was willing to tell with reference to the article in question, and he has been here at each successive session and it seems to me that we have imposed sufficient punishment in a way upon Mr. Wardman in holding him here at these sessions. I therefore move that he be excused from further attendance under this subpoena.

MR. RAINES: Ordinarily I should not object to the request of the Senator in regard to Mr. Wardman, were it not deemed important that in the possible future of the proceedings and of

the examination in regard to this case Mr. Wardman should be present. The difference between Mr. Wardman and Mr. Hennessy was this, that while the form of the two subpoenas was the same and possibly incorrect in form, they not being either of them according to the motion that was made by myself in regard to the subpoena, that one of the gentlemen has seen fit to assume that the subpoena was irregular in form, and to raise the point to refuse to appear upon it, while the other, for some reason or other, perhaps because he had not considered it, has appeared. There is something further than simply the presence of Mr. Wardman yet to be considered, and that is what may or should or shall be done in regard to Mr. Wardman's refusal to answer the questions which he was ordered to answer by a vote of the joint session. In view of that fact now, Mr. President, I do not think that this is the time to excuse Mr. Wardman from further attendance upon the joint session.

MR. TULLY: I understand that Mr. Wardman is entirely willing to come here at the request of the Legislature at any time hereafter without any process from the Legislature. But I want to point out to the Senator from the forty-second with reference to the issuance of that subpoena as well as the subpoena for Mr. Hennessy that under rule four it not only points out the language of the subpoena, but it also provides that any subpoena in this proceeding shall be issued upon the application of the counsel for the Legislature or by counsel for the justice sought to be removed, and both of these subpoenas, if my recollection serves me correctly, have been issued upon motion of the joint session.

THE PRESIDENT: Whatever the joint assembly by its counsel or its agent does, it certainly could do by itself. The subpoenas were issued upon the direction of the joint assembly upon motion of the Senator from the forty-second. It is perhaps due the joint assembly to say that Mr. Wardman has stated to the chair that he will be at the other end of the telephone in New York and will come here by the next train at any time the joint assembly wish to have him appear.

MR. RAINES: I have no doubt that Mr. Wardman has come to the conclusion that by this time instead of damaging seriously any interests that is being considered before the Legislature he has damaged in the minds of the community more the press than he has any other interest. Now, I do not desire to inconvenience Mr. Wardman or his paper to any unnecessary extent, and in view of the statement made by the President that he will respond at any moment to a telephone or telegraph call without further subpoena, I shall not object to his being excused temporarily from attendance.

THE PRESIDENT: The question is upon the motion of the Senator from the thirty-first. Those in favor say aye——

MR. ELSBERG: Mr. President, may I just suggest, in the convenience and interest of Mr. Wardman as well as this Assembly that if the subpoena which was issued directing the attendance of Mr. Hennessy is obeyed, as I understood it was intended it should be obeyed this afternoon, and Mr. Hennessy is produced here this afternoon, we might be able to dispose of the whole matter this afternoon and Mr. Wardman's convenience could be served as well as that of this body.

THE PRESIDENT: The desk has informed the Chair that they have received no information as to whether the subpoena has been served. Those in favor of the motion——

MR. MALBY: May I inquire what the motion was?

THE PRESIDENT: The motion of the Senator from the Forty-first is that Mr. Wardman be excused from further attendance upon the joint session until such time as he shall be requested to attend by the joint session.

MR. MALBY: Mr. President, upon that suggestion I desire to say, that for several days and for several weeks I have been more or less in attendance upon this joint session. I have not been able to go home to attend to my personal affairs, which I would like to do very much. I am informed by counsel on both sides that the testimony is nearly concluded. Now, when it is

concluded, I presume that we will be in a position, if we desire, to take up further the newspaper proposition. I want to say to my colleagues and members of the Legislature generally that I shall not deem it incumbent upon myself to remain longer in Albany than to perform the duty for which I have been summoned. I will not remain thus to have some one telephone to New York to appear here to answer a subpoena or to make an inquiry as to his personal conduct. I believe that it is no greater inconvenience to Mr. Wardman to remain here than it is for me, and in particular inasmuch as he is the person who is keeping himself here. I want to suggest to my colleagues of both branches of the Legislature that I cannot fully appreciate their anxiety to excuse and to accommodate an individual who is the editor of a paper who has called each and every member a common ordinary boodler and briber and thief. For my own part the subpoenas issued have been good. His appearance here is a avoidance, at least in any court of justice, of any irregularity in reference to it; and his refusal to answer the questions is a contempt, if we have the right to question him upon any proposition. Now, having given expression to these few thoughts for a moment, I suggest that he be required to remain until we have discharged our duties so far as he is concerned, if, indeed, we desire him at all.

THE PRESIDENT: Does the Chair understand the Senator from the Thirty-second offers that as an amendment?

MR. MALBY: I move that the motion of the Senator from the Forty-first lie upon the table for the present.

THE PRESIDENT: The question is upon the motion of the Senator from the Thirty-second, that the motion of the Senator from the Forty-first lie upon the table. Those in favor say aye, those opposed, no. Carried. The joint assembly stands adjourned until 2.30 o'clock.

At the hour of 1 o'clock p. m. the President and Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate stand in recess until 2.25 o'clock p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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#### TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The hour of 2.30 p. m. having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber to meet in joint session.

#### JOINT SESSION—ASSEMBLY CHAMBER.

THE PRESIDENT: We are ready to proceed.

WARREN B. HOOKER recalled.

Examined by MR. COMAN.

Q. Judge Hooker, you filed with the Bar Association Grievance Committee an affidavit, did you not? A. Yes, sir.

Q. In that affidavit, on page 27 of the report, it appears that you swore to this: "In the fall of 1898, while I was a member of Congress, I spoke to the postmaster, Arthur R. Moore, about Frank P. Ball at the the latter's request," etc. Does that aid you in any way in fixing the time when you spoke to Moore about Ball's appointment? A. I don't think.

Q. You heard Moore testify in this case, didn't you? A. Yes, sir.

Q. And you heard him testify that you spoke to him a very few days before the appointment was actually made? A. Well, whatever his statement was with reference to it, I heard it.

Q. Does that aid your recollection any? A. No, sir.

Q. Not in the slightest? A. No.

Q. You are still unable to give the joint session any definite idea as to when you spoke to Moore on that subject? A. Except that it was prior to this time; I am unable to fix the exact date.

Q. Well, you are unable to fix it even approximately, aren't you? A. Well, I said it was some time prior to that, in that year.

Q. Give us your best recollection as to how long prior? A. Well, Mr. Coman, I have told you I am giving you the best that I can.

Q. You are unable to fix it within a year? A. Well, I should say it was some time along in the year, the latter part of the year, along in the fall after the first, say.

Q. Now, you have known Ball for twenty years; what sort of business had Ball been engaged in during all the time that you had known him? A. Well, I have told you for quite a long time he was in the Fredonia National Bank.

Q. As the bookkeeper? A. Yes, sir.

Q. And after that? A. Well, I don't know just what he did go—engage in right after that. His people had quite a large farm of sixty or seventy acres; and his father died and his mother was an elderly lady and he had to do with the management of that.

Q. You did know that he was engaged in the ticket broker's business for years? A. I didn't know, except as I have stated to you.

Q. Well, how have you stated to us? A. Well, you have asked me questions and I have answered you.

Q. Well, what do you know about his engaging in that business? A. I had heard he was engaged in the business at Dunkirk.

Q. Now, you knew that he had been appointed as a laborer in the Fredonia postoffice? A. Yes, sir.

Q. Did you know what the duties of a laborer in that postoffice were? A. I did not.

Q. What did you think they were? A. I did not give it any thought; that was not a part of my duties, that was the part of the duties of the postoffice department.



Q. You had no duty in respect to these departments, did you? You owed no duty to the government? A. Owed no duty?

Q. Did you? A. I owed the duty of recommending competent, honorable, upright people in places.

Q. Now will you tell to this joint assembly the name of one competent, honorable, upright man or woman that you recommended to the Fredonia postoffice during the years I have mentioned? A. Would I.

Q. Yes, sir. A. Certainly.

Q. Give a name? A. Frank P. Ball.

Q. Frank P. Ball? You have heard Frank P. Ball sworn here, haven't you? A. Yes, sir.

Q. You have heard him swear to receiving \$2,532.07 from the government without having rendered an hour's service for it, haven't you? A. Yes, sir.

Q. Do you consider that an honorable, competent, upright man? A. That had not taken place when I recommended him for the position.

Q. I asked you to name a competent, honorable, upright man whom you recommended? A. When I recommended him he was in that condition.

Q. Do you consider him a competent, honorable, upright man? Do you now? A. Just wait.

Q. I am not asking you what you considered him at the time; I am asking you to name a man or woman whom you recommended to that office who actually was honorable, upright and competent? A. Yes.

Q. Do you name Frank P. Ball as one? A. I name him; Frank P. Ball was a competent, honorable, upright man at the time he was recommended by me for that position.

Q. You know now, sir, that Frank P. Ball was just a commonplace criminal, don't you? A. I do not, sir. €

Q. You know he robbed the Government of over \$2,500? A. You may characterize it as you see fit.

Q. How do you characterize it? A. I am not characterizing it.

Q. I ask you, sir, to characterize it? A. I am not characterizing it.

MR. GOODRICH: We object to that line of testimony as immaterial. There is no charge which would allow the pressure of such a question, it seems to us utterly immaterial and calling for a conclusion. It is calling for the conclusion of the witness as to the conduct of Mr. Ball of an offence which had not been committed.

THE PRESIDENT: It is cross-examination, the objection is overruled.

MR. COMAN: Will the stenographer read the question.

(Question read by stenographer.)

WITNESS: In what way?

Q. Do you consider the conduct of Frank P. Ball as testified to, by him, in your presence here, to be that of an honorable, competent and upright man? A. I think it was conduct that is very regrettable that it took place, but there was no time that Mr. Ball—that the postmaster at Fredonia could not have reported this to the department and had the action of the department, or made the suggestion to Mr. Ball that he must do the work; and because he did not do it I do not think that I am open to any criticism for that reason.

Q. Now, judge, do you consider you have answered my question? A. I do.

MR. COMAN: I ask the stenographer to read the question again.

(Stenographer reads the question as follows: "Q. Do you consider the conduct of Frank P. Ball as testified to by him in your presence here to be that of an honorable, competent and upright man.")

A. Well, I will say that it is open to criticism.

Q. It was criminal, was it not, sir, as a judge and a lawyer? A. I wouldn't say so.

Q. Why not? A. Well, I don't know why you should want me to characterize that or speak with reference to that.

Q. I would like to get your views, sir, as to the public service.

A. I have told you with reference to it, I told you I thought it was conduct that ought not to have taken place and suggested to you what——

Q. (Interrupting) You heard Melvin H. Taylor testify in this case, did you not? A. Yes, sir, I think nearly all of it.

Q. You heard him testify to making these payments to Ball and Maurice Hooker knowing that they had performed no service?

A. I did; yes, sir.

Q. Do you consider that the conduct of a competent, honorable and upright man? A. Well, now, that is subject to the same criticism of my way of looking at it.

Q. And in your judgment it was not criminal? A. You don't want me to characterize that.

Q. I would like you to, sir, unless you desire not to. A. I am not seeking to evade it in the slightest, I have told you what I think of it.

Q. You prefer not to? A. I prefer not to characterize it in that way.

Q. You heard Ora Caldwell testify to receiving compensation from that office for a long period of time before he even knew he had been appointed there, did you not? A. I heard his evidence; yes, sir.

Q. Do you consider that the conduct of an honorable, upright man? A. I think that is subject to serious criticism; yes, sir.

Q. Do you think that was criminal? A. Well, I don't like to characterize, those people are neighbors of mine. I don't like to characterize them as criminals.

Q. You have testified, Judge Hooker, that you were never engaged in any conspiracy to defraud the government of the United States, did you not? A. I did, yes, sir.

Q. You know now, do you not, that the United States Government was defrauded in nearly every instance where you recommended an appointment to this office during the period from 1898 to 1902? A. Well, I know what the facts are and I have stated to you my connection with them and you know the connection of the others with them.

Q. Is that your answer, judge? A. Yes.

Q. Did you ever consider when you asked for Ball's appointment as a laborer whether Ball was the kind of a man who would be likely to perform the duties of a laborer? A. Yes, sir.

Q. What consideration did you give that subject? A. I considered that he could do the work and would do the work.

Q. Scrubbing floors and cleaning windows? A. If it was necessary, whatever was necessary to be done, I thought he would do.

Q. You thought that was necessary to do, didn't you? A. Whatever was necessary to be done, I didn't go into the details of it.

Q. You knew Ball hadn't been a laborer, as we commonly understand the term? A. I knew he had worked upon a farm and had worked in his yard and vineyard.

Q. You knew also, did you not, that during the greater part of his life, in fact ever since he was a boy, he had been engaged in labors of a clerical character? A. Part of the time, yes, sir.

Q. Largely, did you not? A. Oh, he was during part of the time in the bank and he was engaged in doing janitor work, scrubbing work.

Q. That was when he was a boy, wasn't it? A. Oh, he wasn't a boy when he was doing it.

Q. Now you have said, Judge Hooker, that your understanding was that Maurice was to perform those duties in the mornings and at night? A. Yes, sir.

Q. During what hours did you understand that he would be occupied with his school work? A. Well, I didn't know what those hours were.

Q. Were you trustee of the school, have you ever been? A. I think not; I was a member of the local board for a short time.

Q. When was that? A. In 1898, I think it was, about thirty days; I resigned when I was appointed judge.

Q. You don't know much about the school up there, do you? A. Not excepting in a general way.

Q. Did you have a general knowledge of about how much time

would be occupied by this young man in his attendance upon his duties at school? A. No, sir.

Q. Not at all? A. No, sir.

Q. Did you know about the school hours? A. Well, I know something about school hours.

Q. Well, what were they? A. I think they were from nine until three or four, divided into divisions; many of the students would attend during one or two divisions a day and be out of school the balance of the time.

Q. Now do you know any custom among government employees under which they are permitted to devote practically the entire day time to their private affairs? A. I don't, no, sir.

Q. Now after Taylor was appointed postmaster who was appointed deputy? A. Chauncey Sessions.

Q. Then Chauncey D. Sessions is a nephew of Mrs. Hooker? A. Yes, sir.

Q. Was he appointed clerk soon after Taylor's appointment? A. I think so.

Q. In whose place? A. Mrs. Moore's.

Q. Mary L. Moore? A. Yes, sir.

Q. You have testified to a conversation with a Mr. Proctor; did you have more than one conversation with Mr. Proctor? A. I think I did.

Q. Upon what subject? A. Upon the subject of these appointees.

Q. The four persons you have named? A. Yes, sir.

Q. Are you able to fix the date of either of those conversations? A. I can fix it approximately.

Q. Do so. A. The first conversation was between January and April.

Q. When was the next? A. They were both about that time, or during that time, between January and April.

Q. Now, in your letter to Beavers, under date of April 22, you say "I was in Washington the 14th and called on you but you were out; I went to the Civil Service Commission and they showed me some of the papers," was that one of the occasions? A. That is one.

Q. Was the other before or after? A. The other was before that time.

Q. And during another visit to Washington? A. Yes, sir.

Q. About how long before? A. I couldn't tell you how long.

Q. You say "I am just in receipt of your letter of the 8th with enclosure which I return to you, and I wish to thank you more than I can express for your kindness in forwarding the papers to me," what papers were they? A. Papers written by A. M. Coburn of Fredonia, the witness who was sworn here.

Q. With reference to what subject? A. With reference to the appointment of carriers.

Q. Why were you so deeply interested in those papers that you wished to thank Beavers for sending them? A. Because he sent them to me. Simply expressed myself in that way for his sending them to me.

Q. After that letter you expressed this language "I wish to thank you for your kindness in arranging the Wellsville matter for me and the other good things you are continually throwing in my pathway?" A. Yes, sir.

Q. That was under date of April 22, 1899? A. Yes, sir.

Q. You had just become a justice of the Supreme Court? A. Yes, sir.

Q. When you thanked Beavers for the good things he was continually throwing in your pathway? A. Yes, sir.

Q. What were they? A. There was quite a number of people in that Congressional district that had no representative at that time, very nice people, and, like the postmaster from Wellsville, wanted some favor, and he would write to me and I would enclose the letter to the department. That was done in all of the cases where they wanted it done; that was what I meant.

Q. That was what you meant by Beavers continually throwing good things in your pathway? A. Yes, sir, whenever the good people in that district wanted anything; they had seen fit to honor me and I was continually obligated to them; when he was doing that for those people he was doing it for me.

Q. When he was permitting Frank Ball to draw a salary of

\$600 a year without performing any services, was that one of the good things you had in your mind? A. That is a very unfair question.

Q. Don't you desire it? A. I desire to answer anything you ask me—will you repeat the question?

Q. (Question read by stenographer.) A. No, sir.

Q. Was the payment to Maurice Hooker of \$400 a year, and he performing no services, one of the good things you had in your mind? A. No, sir; had my attention been called to either of those cases I should have insisted that they should have done their work or be removed from office.

Q. Now, judge, when was the Dunkirk postoffice building commenced? A. Well, that was in 1901. Doesn't the record show? You have them there; I haven't them with me.

Q. I am not so particular about the exact time, but it was in the fall of 1901, was it? A. I can't tell you. I think it was—

Q. Well, judge, you remember the circumstance? A. Oh, yes; yes, sir; it was 1901 or 1902.

Q. And prior to the time when the erection of that building was commenced had you had any conversation with any of the members of the Dunkirk common council? A. I think I talked with one; one or two.

Q. Have you read the testimony of Mr. Stearns in the Wirtner case, in which he testified both you and he had talked with all of them with the possible exception of one? A. Well, I heard Mr. Stearns' evidence. ●

Q. But I am speaking of his testimony in the Wirtner case which has been read here. A. I heard it read.

Q. Do you recollect the fact that Mr Stearns testified that you and he talked with all the members of the common council with the possible exception of one? A. I recall it as you read it to me.

Q. What was the fact? A. I think with two of them; I think Mr. Mathewson and Mr. Holstein. ●

Q. What was the subject of your conversation? A. On the subject of their building or constructing some building next immediately adjoining ours on the south.

Q. What was it? A. The general substance of it was that they would not do it if we constructed this building in the way we contemplated. I might have talked with others; I wouldn't say.

Q. Now, passing over the other events which you have testified to, come down to the time that this action was commenced by Wirtner? A. Yes, sir.

Q. Mr. Stearns called you up on the telephone and told you that this action had been commenced, did he? A. Yes, sir.

Q. And did he tell you what the nature of the action was? A. Well, as I said I think he said it was a taxpayers action.

Q. Well, did he tell you what its object was? A. No, I think that is about what he said to me.

Q. Well, did he indicate in any way that it was brought to prevent the execution of this lease? A. Oh, he said it was a taxpayers action brought to restrain the city from committing waste.

Q. By the execution of this lease? A. I don't know that he used that expression.

Q. You understood what the action was for, didn't you? A. I understood it was an action in the nature of restraining the commission of waste, yes, sir.

Q. Now, Mr. Stearns asked you to come over and talk about it? A. Yes, sir.

Q. And you did so? A. Yes, sir.

Q. And you were there, you think, for from half an hour to an hour? A. Oh, yes; I wouldn't be sure about the time.

Q. But some little time? A. Yes.

Q. And what did you and Mr. Stearns talk about? A. Well, we talked—or he talked quite a little about some fellow that had some grievance against him, or claimed that he did, and the animus of this action being brought against him.

Q. Well, you went over and talked about this law-suit didn't you? A. Yes. •

Q. You considered it, didn't you, quite a serious matter, that an action of that kind should be brought against you, a justice of the Supreme Court? A. Yes, sir.



Q. And you considered that it was entitled to some consideration on your part, didn't you? A. Yes, sir.

Q. Now, did you talk to Mr. Stearns about your defense in that action? A. I don't think we did, Mr. Coman.

Q. Don't think you did? A. Well, we talked about the case generally.

Q. Just tell what was said there about the case generally? A. That would be pretty difficult; I will tell—

Q. Tell anything that you recall. A. We talked about the case, about what had been done and the nature of the action.

Q. What was said on those subjects? A. Well, I stated to you we talked about the lease, something was said about the contents of the lease and just what had been done and just what the—and the nature of the action.

Q. Did you discuss the probabilities as to whether the action could or could not be maintained? A. I don't think we did.

Q. Did you discuss the line of your defense? A. No, sir, except—

Q. Well, what were you there for then, judge, if you didn't talk about those things at all? A. Well, we did talk about them. I said we talked about the action, what had been done and just what hour—what had taken place?

Q. Yes. A. Yes, sir.

Q. And did you talk about the line of your defense? A. We didn't make any examination of that, Mr. Coman.

Q. Did you determine whether a defense should be interposed or not? A. I think it was stated in this way as I said on my direct examination, after our conversation Mr. Warner said that he would look up the matter and prepare and answer.

Q. Did you or Mr. Stearns there make any suggestion to Mr. Warner about the nature of that answer? A. I don't think so.

Q. Why, judge, were you and Mr. Stearns willing to leave the preparation of your answer in that case to the hands of Mr. Warner without any instructions or any suggestions from either of you? A. Absolutely.

Q. Did you put Mr. Warner in possession of what you claimed

were the facts? A. The office there did; I didn't. Mr. Stearns' office did.

Q. You didn't? A. Why, I didn't have a paper in connection with the case, Mr. Coman. Even the summons and complaint was not served upon me.

Q. But the summons and complaint were there? A. Well, they might have been there? I don't know that I examined them. I don't think I ever read the complaint until it was——

Q. Weren't you curious to know, Judge Hooker, what sort of an action had been commenced against you by a tax-payer of the city of Dunkirk? A. Curious?

Q. Yes, sir. A. Why, it was stated to me just what it was. It wouldn't be necessary to read over the complaint to ascertain that fact.

Q. And as matter of fact you did not read it over? A. Well, I wouldn't say. I might or might not. Possibly I did read it.

Q. Now, shortly afterward Mr. Stearns called you up again on the telephone did he? A. Yes, sir.

Q. And he said to you that Wirtner was ready to quit? A. Something like that, yes, sir.

Q. What else did he say? A. Well, he wanted me to secure some judge who would hear the evidence in Buffalo; take the evidence and——

Q. Now, Judge—— A. Do you want to know what else?

Q. Yes, you may go ahead. A. That was after it appears this preliminary judgment had been argued——a motion to have a continuance of that had been argued, and he said Judge White had heard that and suggested I see Judge White.

Q. Yes. Anything further? A. I think that is substantially all.

Q. Now, when he told you that Wirtner was ready to quit, and in substance that the plaintiff did not care to prosecute his action; and also told you that he wanted you to get a judge to hear the evidence, did you ask him what occasion there was for a judge to hear the evidence if Wirtner was ready to quit? A. No, sir.

Q. Didn't it occur to you that if Wirtner was ready to quit that the proper and only necessary thing to do was to stipulate a discontinuance of that action? A. No, sir.

Q. What was your view on that subject? A. Mr. Coman, I gave the matter absolutely no attention. We had an attorney in the matter and I gave it no attention whatever. You would have said, if I had endeavored to have prepared a defense, that my conduct was improper because I tried to practice law.

Q. I would have said that? A. Yes, that would have been your criticism of me, and because I avoided that and got an attorney, now you want to criticise me for that.

Q. You knew this, did you not, and you now know, that in a taxpayers action to restrain the execution of a lease, if the plaintiff desires to discontinue, the only thing necessary to do is to enter a stipulation? A. If both parties want to discontinue an action that is easily accomplished by a stipulation and an order being entered.

Q. And you so understood that both parties were willing? A. I did not make any inquiries with reference to that.

Q. You went to Judge White, did you? A. Yes, sir.

Q. What did you say to him? A. I told him there was some people coming down there to take the evidence in an action in which I was personally interested, and asked him if he would hear the case.

Q. Did you make any suggestion to him further than that? A. No, sir.

Q. Did you say to him that you thought it wouldn't take a great while to try it? A. I may have made that remark.

Q. Do you think you did make that remark? A. I may have made it. I have no quarrel with Judge White as to my requesting him to hear the case.

Q. Now, if you did say to him that it probably wouldn't take a great while to try it, what did you base that on? A. I presume I based that upon my general opinion that it wouldn't take very long to try a case of that kind.

Q. In which there was no contest, was that the idea? A. O, no.

Q. Didn't you think it would take a great while to try a taxpayer's action if there was a contest in it? A. What is that?

Q. Didn't you think it would take a good while to try that taxpayer's action if there was a contest in it? A. I don't know what I did think about that.

Q. In May, 1904, Mr. Arthur Wade called you up on the telephone and spoke to you about this judgment, didn't he? A. Yes, sir.

Q. And just what did he say about Judge White's conscience? A. Well, you have read—he has given his evidence here.

Q. You are testifying now. A. Sure. Do you want the substance of what he said to me?

Q. Yes. A. He began to talk to me about the Wirtner judgment; asked me something about it, and I couldn't understand what he was getting at.

Q. What did he say about White's conscience? A. He said Judge White seemed to be disturbed about the matter; he had told him that after a little time he would look the matter up and have it disposed of in some way.

Q. Did he say that Judge White wanted the judgment set aside? A. Something like that; I don't remember now just what it was.

Q. Now, Judge Hooker, although you had that information in May, you never attempted to ascertain what there was in that judgment and you never saw it and never saw a copy of it until some time in January or February, 1905? A. Long about that time.

Q. A brother justice of the Supreme Court had brought to your attention the fact that his conscience was troubling him? A. Yes.

Q. By a judgment entered by him in a case in which you were a party, and a case which you had asked him to try? A. Yes.

Q. And you never made any investigation of the subject to find out what was in that judgment, or whether or not it should be set aside, is that it? A. Well, that is what you say about it.

Q. I asked what you say about it? A. I say this: Judge White had sent for—he lived only a short distance from me, he could have reached me by wire or telephone or letter very easily; he had seen fit not to say one word to me about the entry of this judgment or made the slightest inquiry of me to get an explanation from me as to my conduct or with reference to the judgment. He had sent it to the district-attorney and I did not feel that in view of Judge White's treatment of me in that regard that I was under any particular obligation to hurry on his account.

Q. And it was really a matter of no concern to you what was in that judgment? A. O, yes it was; yes, sir.

Q. Then why didn't you find out what was in it? A. Why didn't I?

Q. Yes, sir. A. I had no reason for finding out.

Q. You had no reason? A. No, because he had the full information; he had sent to the district-attorney and Mr. Stearns and got the report of the case.

Q. You did not have the information, did you? A. No, sir. I knew I had done nothing absolutely wrong in the case—absolutely nothing, and there was no occasion for me to be alarmed.

Q. And you were willing that the matter should rest in just that way? A. Yes, sir.

Q. Although it was intimated to you in May that Judge White wanted that judgment set aside, you never signed the stipulation until November of that same year? A. I signed it in November.

Q. Why did you sign it? A. I signed it because Mr. Wade or Mr. Towne telephoned to me that Judge White felt that he wanted it—or that he wanted the action discontinued, and I said I was perfectly willing to discontinue it.

Q. And you did not know then what was in this judgment, did you? A. No, sir.

Q. Why didn't you find out before you signed the stipulation setting it aside? A. Why, I didn't care anything about it.

Q. You didn't care? A. Why, no. Mr. Coman, you forget all the time we had a lease with this common council of this property and it would have been perfectly easy to have had that lease executed, and this action might just as well have been discontinued as not.

Q. But, judge, your application for that lease had been withdrawn long before, had it not? A. Notwithstanding our application to withdraw it, they had gone on and passed—overruled the veto of the mayor and insisted that we should take it.

Q. But you never had asked for it? A. No, sir; except in the way——

Q. And your application for it had been withdrawn in a written communication? A. How is that?

Q. Your application for the lease had been withdrawn in a written communication to the common council? A. There had been some communication, I don't know what it was; Mr. Stearns sent it in.

Q. Now, Judge Hooker, did you also tell Judge White when you asked him to hear this case that as you understood it there was substantially no contest between the parties? A. I don't remember just the language; whatever he says was the language used I am perfectly willing to adopt.

Q. Will you tell the joint assembly why you delayed from May to November in signing the stipulation setting aside that judgment? A. I think I have explained it to you. Do you want any other explanation?

Q. Well, I would like you to give your reasons fully? A. Well, Mr. Wade's letter was peculiar. Judge White wrote him a letter which Wade showed me afterwards, after the seal of secrecy had been withdrawn by Judge White, that he must not under any circumstances say a word to me about it; and Wade was then acting as my counsel in the matter before the subcommittee before the Bar Association; and Wade sent for me and Wade showed me this letter afterwards, and I could not understand

why Judge White should take that course with me. Our relations had been pleasant, and if I had done anything wrong or induced him to act improperly in a case, I thought it was his duty to have sent for me and give me an opportunity to explain before he sent the papers and asked for an investigation by the district attorney of the county in which I lived.

Q. In short, you were offended? A. No, I say that I did feel quite hurt at his conduct, yes.

Q. And that was why you did not sign it? Well, along towards November did Judge White become exacting in his demands that this judgment should be set aside? A. I did not have any correspondence with him.

Q. You had correspondence with Mr. Towne, didn't you? A. None except by telephone.

Q. Didn't Mr. Towne write letters to you, Judge Hooker? A. Oh, no. I don't know but he did write one while I was in Brooklyn, but I never received the letter; it miscarried in some way and he told me about it when I returned home.

Q. You never received it? A. No.

MR. COMAN: That is all.

RE-DIRECT EXAMINATION by MR. STANCHFIELD:

Q. Were you present, Judge Hooker, before the Assembly judiciary committee when Mr. Justice White was upon the witness stand? A. Yes, sir.

A. Do you recall that he was asked time, and time and time again to explain what the fact had been in his inner consciousness that inclined him to desire the vacation of this judgment? A. I recall those inquiries were made of him.

Q. Did he ever give to any human being any reason why he wanted that judgment set aside? A. I didn't hear them if he gave them.

Q. Now you have stated to the joint assembly that this was a taxpayer's action? A. Yes, sir.

Q. And Mr. Coman over and again has rung the changes to find out why it was desirable for the defendants to obtain any-

thing further or different than a discontinuance of the action. I ask you whether it would not be of advantage to you to have an affirmative judgment against Wirtner upon the ground that such a judgment might be *res adjudicata*, or *stare decisis* against any other taxpayer in the city of Dunkirk similarly situated? A. It might be.

Q. Are Tiffany and Colburn now, and have they been for some years, over some period of time, personally and politically antagonistic to you? A. Tiffany especially, yes, sir.

Q. And his antagonism arose out of what? A. Failure to secure the postoffice at Fredonia.

Q. Did you directly or indirectly have any part or parcel in securing the appointment of Chauncey Sessions as deputy postmaster under Mr. Taylor? A. I don't know whether I ever spoke anything to Mr. Taylor about it or not.

Q. Have no recollection. A. No.

Q. Now you have been asked by Mr. Coman whether or no you regarded the conduct of Ball or Maurice Hooker subsequent to their appointment in the postoffice in taking pay for service which they did not render as criminal. I will ask you whether or no the grand jury or other tribunals or Federal tribunals having jurisdiction in that locality ever took cognizance of these cases? A. Not to my knowledge.

Q. Was any prosecution ever set on foot by the United States Government, criminal in its character? A. Not to my knowledge.

Q. Or any complaint of which you are aware ever been made to a committing magistrate or to a grand jury? A. No, sir.

Q. Isn't it a fact that Judge Ray, now of the United States courts, was promoted to a judicial place from a chairmanship of a committee of the House of Congress?

MR. COMAN: I object to that as immaterial.

MR. STANCHFIELD: Well, Mr. Coman, if it was material for you to ask him if he was not the only instance where one had been appointed—



MR. COMAN (Interrupting) : Oh, no, not at all.

MR. STANCHFIELD (Continuing) : If it was relevant for you to make that inquiry it is relevant for me to show there was another.

THE PRESIDENT: He may answer it.

A. He was promoted; yes, sir.

Q. When he was appointed to the United States bench he was chairman, was he not, of the judiciary committee of the House of Congress? A. Yes, sir.

Q. That similar situation I think obtained with reference to Senator Quarles of the United States Senate. I will ask you whether it was not the fact——

A. (Interrupting.) Oh, there were several——

Q. (Continuing.) That Judge Ray—if I am wrong Senator Allds will correct me—that Judge Ray maintains still enough interest in political patronage to have a son retained in the post-office at Norwich?

MR. COMAN: That is objected to.

THE PRESIDENT: Objection sustained.

MR. STANCHFIELD: Well, I assume this Legislature will take judicial notice of that fact.

Q. While you were upon the bench as a judge were you at one time requested by Mr. Milburn, as president of the Pan-American, and a delegation of citizens of Buffalo to aid them at Washington in securing a Federal appropriation of half a million dollars to defray the expenses of the exposition?

MR. COMAN: I object to it.

THE PRESIDENT: Objection sustained.

MR. STANCHFIELD: Well now, Mr. President, if it is material cross-examination to show that Judge Hooker is subject to criticism at the hands of this body by reason of the fact that while upon the bench he granted the request of a man who wanted a pension or he granted the request of some man who wanted to be appointed a letter carrier, I think it is equally

competent for me to show that an entire city, not an individual, but that an entire city right within his judicial district appointed a delegation of its leading citizens to go and ask him upon the bench to do for them, a municipality, a favor, I do not know why if it is competent to show these things to smirch him why it ought not to be competent to show the other side, and show what was asked for and condoned by the constituency that elected him to the place from which you seek to remove him. That is the theory upon which this evidence is offered. If the President still adheres to that ruling, we are dealing here with the questions of morals, of ethics and proprieties, it may be that if an entire city goes to one in whose election district it happens to be and asks of him, their servant, whom they put in place, that he should discard the judicial ermine and should go as their servant to get for them a favor, it ought to be evident I have the right to prove it before this joint session, it would seem to me, as bearing upon the question as to whether that line of conduct is such as indicates moral unfitness upon his part or gross callousness or moral turpitude or delinquencies such as unfits him to occupy the place he holds.

THE PRESIDENT: We won't discuss it.

By MR. STANCHFIELD:

Q. Now, Mr. Milburn was at one time the president of the Buffalo Bar Association? A. President of the State Bar Association.

Q. And I was going to follow it—likewise president of the State Bar Association? A. Yes, sir.

Q. Was he president of the Pan-American Exposition? A. Yes, sir.

Q. Did Mr. Milburn request you to go to Washington on behalf of the Pan-American Exposition?

MR. COMAN: I object to that.

THE PRESIDENT: Objection sustained.

By MR. STANCHFIELD:

Q. Now, as matter of fact, and irrespective of request, did you and Mr. Milburn go to Washington together?

MR. COMAN: I object to that.

THE PRESIDENT: Objection sustained.

By MR. STANCHFIELD:

Q. After some of your interviews with Mr. Heath at Washington—Perry Heath who was the First Assistant Postmaster-General, it appears here that you wrote letters, addressing them to Mr. Beavers. Was that because of the fact that the charge of the clerks, the fixing of salaries and their assignments and designations came peculiarly within Beavers' province? A. Yes, sir.

Q. And no other reason? A. That is all.

Q. During those periods of time that you were upon the bench and when you were in Fredonia I ask you whether or no portions of your time were occupied in writing opinions and deciding matters that had been heard before you. A. Yes, sir.

Q. Did you have a stenographer there for that purpose? A. Yes, sir.

Q. And were you in your office devoting portions of your time when in Fredonia to that work? A. It required all my time; I didn't have time for anything else.

MR. STANCHFIELD: I think that is all, Judge Hooker.

By MR. COMAN:

Q. Just a question or two, Judge. Judge, you say that there might have been some advantage to you in obtaining an affirmative judgment in this action, as it might have been *res adjudicata* or *stare decisis* against another taxpayer similarly situated. Is that the reason why you wanted this judgment? A. That wasn't the reason; no.

Q. Do you think—— A. (continuing) particularly——

Q. (continuing) As a judge and a lawyer that a judgment taken practically by stipulation would be either *res adjudicata*

or stare decisis as against another taxpayer similarly situated?

A. Well, I wouldn't care to express an opinion of that without some examination of it.

Q. And you say that so far as you know there was no prosecution of Ball, and Maurice Hooker and Ora Caldwell, and you know the money paid to them was returned to the Government?

A. Yes, sir.

Q. When Mr. Taylor came to you and told you that he had got to pay back the money that Maurice Hooker, your nephew, had received from the Government in this position to which you had requested an appointment, what did you say to him? A. Said several things to him.

Q. What did you say to him?

MR. STANCHFIELD: You have been all over that?

A. He told me the inspectors had been there and he——

Q. What did you say? A. In conclusion I expressed regret that he permitted such a state of affairs to exist, and told him, under the circumstances as he stated to me, he would have to do as he thought best about refunding the money.

MR. STANCHFIELD: We next offer in evidence the affidavit of Maurice Hooker, which Mr. Westwood will read; it was introduced before the State Bar Association and Assembly Judiciary Committee.

“State of New York, County of Chautauqua, ss.:

Maurice Hooker, being duly sworn, deposes and says: I am eighteen years of age and reside in the town of Perrysburg, county of Cattaraugus, State of New York. In the month of January, 1902, I began attending school in the village of Fredonia, at the State Normal School. Judge Warren B. Hooker of Fredonia, is my uncle. I had a talk with him some time before I began going to school at the Normal, and he thought he might be able to get some position for me by which I could earn something while I was attending school, and I was appointed to a position as laborer in the Fredonia postoffice on the application of the postmaster. My uncle told me when I got this appointment that I would have to

do this work here, and insisted that I must not neglect it but give it just as close attention as the postmaster required. I reported to the postmaster soon afterward and informed him I was attending school, or about to attend school, and that I would like to arrange to do my work nights and mornings. We then talked about getting someone else to do it and pay them out of my salary, but it would not cost as much as my salary would amount to, and, pursuant to this conversation, he did secure someone else to perform these services, and all of the work, as I understood it, in said postoffice that would attach to the position of laborer was done during all the time I had this appointment, and the pay therefor was taken out of my salary every month. It amounted in the aggregate to somewhere between \$150 and \$200, but I do not know the exact amount, and I have no way of determining it. I continued in that position down to the month of August, 1902, attending school all the time when it was in session. I never repeated to my uncle, Judge Hooker, the conversation I had with Mr. Taylor, the postmaster, concerning the subject of securing someone else to do this work. I never mentioned the subject to him at any time, nor has he ever mentioned it to me, and so far as I know he was in entire ignorance of that arrangement. During the time I was in school here I boarded on Newton street, in the said village of Fredonia. My said uncle was away from home most of the time, and I saw him very infrequently. There was never any talk or suggestion by my uncle to me, or by me to him, that I was not to do any work, or that I was not doing it personally; the only talk we had on the subject was about the time I secured the appointment when he assured me I must do the work, and that I must give it just as close attention as the postmaster required. I have never talked with my said uncle about this matter in any manner since I ceased to be in that position, and I do not recall a word of conversation since the one I have above referred to. During all this trouble and all of the talk that has been had about this matter, I have never mentioned it to anyone. I continued going to school until the first of

April, 1904, and during all that time I lived at the same place. I saw my uncle very infrequently, and this subject on those occasions was never referred to. I am now living about twenty miles from Fredonia, and my engagements are such it may be quite impossible for me to be in the city of Dunkirk on the twenty-fourth or twenty-fifth.

(Signed) MAURICE HOOKER.

Subscribed and sworn to before me this

21st day of May, 1904.

HARRY B. ESPY,  
Notary Public."

MR. STANCHFIELD: I now offer in evidence, if the President please, a supplementary list of persons appointed to unclassified postoffices and which were exhibited before the Assembly judiciary committee, and which for some reason were not printed in that record, together with the certificate to the effect that it is a correct list and also a certificate that no reply was received by the civil service commission to either of the letters of the commissioner directed to the President, dated respectively June 20, 1898, and June 11, 1900, in reference to forming a new rule under the civil service.

Ex. O, April 6, 1905.

Persons appointed to unclassified postoffices, shortly afterwards  
months thereafter transferred to other positions in the classi-  
(Supplementary to list in the 16th and 17th reports.)

NAME	Office	Date appointed
Byron C. Yorke.....	Tonawanda, N. Y.....	April 9, 00
Amos Anderson.....	Lansdowne, Pa.....	Sept. 24, 00
Edw. C. Foreman.....	Prescott, Ariz.....	Feb. 15, 00
Thos. H. Reeves.....	Albany, Ga.....	Nov. 1, 99
W. D. Groff.....	Lansdowne, Pa.....	Aug. 15, 00
Wm. L. Reese.....	Ft. Collins, Col.....	Dec. 16, 00
Augustus S. Jones.....	Conneaut, Ohio.....	June 1, 00
John E. Helms.....	Thomasville, Ga.....	Dec. 24, 00
Edmund Wilson.....	Salisbury, Md.....	Sept. 27, 00
Irving H. Elliott.....	Fergus Falls, Minn.....	Aug. 15, 00
John P. Davis.....	Niles, Ohio.....	Nov. 16, 00
Michael Emden.....	Webb City, Mo.....	Dec. 1, 00
Strawn Condit.....	Centralia, Ill.....	Feb. 1, 00
Roderick B. Masius.....	Canon City, Col.....	Feb. 1, 99
Frank Meader.....	Tompkinsville, N. Y.....	April 8, 01
Ida Watson.....	Mt. Vernon, Ill.....	Sept. 1, 01
Mattie E. McDonald.....	LaGrange, Ill.....	July 24, 01
Annie Attridge.....	Watsonville, Cal.....	Sept. 28, 00
A. Lincoln Towle.....	Stoneham, Mass.....	April 1, 01
Lillie E. Tyner.....	Portage, Wis.....	May 6, 01
John Tobin.....	Tompkinsville, N. Y.....	June 1, 01
H. H. Lambeth.....	Florence, Ala.....	Jan. 25, 02
H. D. Sherwood.....	So. Haven, Mich.....	Jan. 1, 01
W. J. Thomas.....	Wauwatosa, Wis.....	May 15, 02
Ethel B. Brown.....	Hempstead, N. Y.....	May 1, 02

classified by the establishment of free delivery and within six  
 fied service.

Classified	Number of certificate and date	Date of transfer	To
May 16, 00.....	3502	2/14/01.....	2/25/01..... Wash., D. C.
Feb. 1, 01.....	3008	2/20/01.....	3/1/01..... Phila., Pa.
Mar. 1, 00.....	3540	3/11/01.....	3/20/01..... Tucson, Ariz.
Nov. 15, 99.....	3584	3/30/01.....	4/30/01..... Jackson, Tenn.
Feb. 1, 01.....	3589	4/2/01.....	4/6/01..... W. Chester, Pa.
Jan. 1, 01.....	3594	4/4/01.....	8/1/01..... Pueblo, Col.
July 16, 00.....	3600	4/6/01.....	4/30/01..... Chicago, Ill.
Jan. 1, 01.....	3516	4/13/01.....	5/14/01..... G. P. O.
Dec. 1, 00.....	3637	4/26/01.....	5/1/01..... Wash., D. C.
Sept. 1, 00.....	3690	5/6/01.....	11/12/00..... Wash., D. C.
Dec. 1, 00.....	3695	5/20/01.....	6/1/01..... Dayton, Ohio.
Feb. 1, 01.....	3751	6/20/01.....	7/1/01..... Indianapolis, Ind.
Mar. 1, 00.....	3958	9/6/01.....	9/4/01..... Chicago, Ill.
Sept. 99.....	4008	10/8/01.....	12/1/01..... R. M. Ser.
Aug. 1, 01.....	4067	11/2/01.....	10/1/01..... St. Louis, Mo.
Nov. 1, 01.....	4343	3/11/02.....	3/02..... Chicago, Ill.
Sept. 1, 01.....	4344	3/11/02.....	3/02..... Chicago, Ill.
Jan. 2, 01.....	4342	3/11/02.....	3/02..... San Francisco, Cal.
July 1, 01.....	4426	4/02.....	4/02..... Boston, Mass.
July 1, 01.....	4437	4/28/02.....	5/02..... Chicago, Ill.
Aug. 1, 01.....	4545	6/28/02.....	7/02..... Syracuse, N. Y.
Feb. 1, 02.....	4546	6/28/02.....	7/02..... Chicago, Ill.
July 1, 01.....	4857	11/11/02.....	12/02..... Wash., D. C.
July 1, 02.....	4014	0/5/03.....	R. F. D. Ser.
June 1, 02.....	5018	4/1/03.....	Wash., D. C.



I, John T. Doyle, Secretary of the United States Civil Service Commission, do hereby certify that I have caused to be made the enclosed copies of letters of the Commission to the Postmaster-General of February 9, 1898: Letter from the First Assistant Postmaster-General to the Commission of February 19, 1898; letters of the Commission to the Postmaster-General or his assistant, dated May 16, 1898; June 11, 1898; November 7, 1898; April 4, 1899; April 11, 1899; May 24, 1900, and December 20, 1900; the letter from the Commissioners to the President dated June 20, 1898, together with proposed amendments to the civil service rules enclosed therewith; letter from the Commissioners to the President dated June 11, 1900, together with enclosed proposed amendments to the civil service rules; letter from the Commissioners to the President of December 7, 1901, together with enclosed proposed amendment to the civil service rules; executive order of December 11, 1901, amending rules; Rule XIII as it formerly existed, and was incorporated into the rules, May 29, 1899; Rule X, clause one, as it existed February, 1903, and as amended April 15, 1903; letter of recommendation to the Commission of John T. Doyle of April 21, 1900; service record of Katherine K. Clark of April 20, 1900; letter from the Commission to the Postmaster-General of April 14, 1900; recommendation to the Commission of John T. Doyle of April 14, 1900; letter to the Commission from Hon. Perry S. Heath of April 14, 1900; letter to the Commission of Emil Rebell of April 19, 1900, and have caused the same to be compared with the originals thereof remaining on file in the office of the United States Civil Service Commission in the city of Washington, in the District of Columbia, and that the same are in all respects true copies of the said originals respectively.

I do likewise further certify that no reply was received by the Civil Service Commission to either of the letters of the Commissioners directed to the President, dated respectively June 20, 1898, and June 11, 1900.

I do likewise further certify that Table 32-a, annexed to and forming a part of the sixteenth annual report of the Civil Service Commission, appearing at pages 511 and 512 of that report, and

Table 39, annexed to and forming a part of the seventeenth annual report of the Civil Service Commission, appearing at pages 574 and 575 of that report, together with the annexed schedule marked "A," correctly state the facts they purport to show in relation to 138 cases of persons appointed in unclassified postoffices, shortly afterwards classified by the establishment of free delivery thereat, and within six months thereafter transferred to other positions in the classified service.

JOHN T. DOYLE,

Secretary United States Civil Service Commission.

Dated at Washington, March 20, 1905.

MR. STANCHFIELD: Upon the examination of Mr. Tiffany you will recall that he was asked to name the informant who told him of the currency of the rumors that Ball had given some security upon his property for the amount that he had been obliged to refund to this Government, and he named Mr. D. H. Potter, whom he then said was living and residing at Kokomo, Indiana. Now we produced, in consequence of our inability to secure the personal attendance of Potter, a letter from Potter which was read before the Assembly judiciary committee, and which I offer here, page 1023.

MR. CARR: We reserve the right to read that.

MR. COMAN: Certainly.

MR. STANCHFIELD: Which I propose to read:

LAKE ERIE AND WESTERN R. R. CO.

Fort Wayne, Cincinnati and Louisville R. R.,  
Kokomo, Ind., April 1, 1905.

Northern Ohio Railway Co.

Frank P. Ball, Fredonia, N. Y.—Friend Ball: I have your telephone communication of this date, and same was so indistinct that I could not get all that you said, but I think I gained a clear impression of what was wanted. You are aware that I was away

from Kokomo on a trip to the coast during the month of February, and upon my return, to my regret, I found that the business of this station had decreased some 2,000 tons during my absence. You know what that means. In fact the division superintendent has since said to me that they could not sanction my being away so much if this difference in business should continue every time I went out of town. I have been digging like a nigger ever since my return to make this up, but this is the main reason that I do not at this time care to ask to go to Albany. I have received no communication from any one concerning the inquiry but the one sent me by yourself, the first of the week, and to which I promptly replied.

In regard to the Tiffany testimony, in which, if I understood you correctly, you stated that he had sworn that it was I who told him that you had mortgaged your grape farm. In all candor I must say that this information did not originate with me, for I had no means of knowing your obligations whatever. All sorts of stories came to my ears while stopping in Fredonia last fall relative to your losing your farm and business block, to which I paid no attention, and have been careful not to repeat. I trust that this information will be satisfactory to you.

To tell the truth, I think it pretty small potatoes, just because I am out of the State, that my name should be drawn into this matter; not that I do blame you, but I do blame Colburn and Tiffany.

●  
Sincerely,

(Signed) D. H. POTTER.

MR. COMAN: Now, Mr. Stanchfield, please read just what preceded that, the conditions under which it was admitted in evidence.

MR. STANCHFIELD: You mean what you said?  
●

MR. COMAN: Yes.

MR. STANCHFIELD: I read in response to Mr. Coman's suggestion what took place before the Assembly committee.

"MR. COMAN: I have no objection to this letter being read in evidence, provided it may be accompanied by the statement that I have asked Mr. Potter to attend before this committee and he has declined to do so.

MR. STANCHFIELD: That is all right, because we have tried the same experiment with the same result, and that is the theory upon which we are offering the letter."

MR. STANCHFIELD: The respondent rests.

MR. COMAN: Elton D. Warner.

ELTON D. WARNER, called in rebuttal as a witness in behalf of the Legislature, testified as follows:

EXAMINED by MR. COMAN:

Q. Mr. Warner, you are the same Elton D. Warner who testified in this proceeding before the Assembly judiciary committee, are you not? A. I am.

Q. Formerly a member of the firm of Stearns, Warner & Farnham? A. Yes, sir.

Q. You may state whether at any time or place you ever had any conference or consultation with Judge Hooker concerning the case of Wirthner against Stearns, Hooker and others.

MR. STANCHFIELD: We object to that as not rebuttal; the testimony of the witness before the Assembly judiciary committee had been read in evidence here as to all that took place there and stated all he knew about it.

THE PRESIDENT: Objection overruled.

A. I have utterly no recollection of having any conversation with Justice Hooker or in his presence about this lawsuit. I think he is mistaken about it. I did have some conversation with Mr. Stearns, but I do not think I ever met him upon the subject.

Q. Where were you during the greater part of the time in December, 1901, and January, 1902? A. Why, I was here in Albany in the Attorney-General's office.

Q. You were Deputy Attorney-General? A. Yes, sir.

Q. And did you at any time dictate to Miss Saxton or any other stenographer the answer in that case or any part of it? A. I don't think I ever did; I don't think I ever saw the answer until after it was prepared.

Q. Did you dictate or assist in the preparation of the findings of fact? A. I did not; I never saw them until last fall when I saw them attached to the judgment roll.

Q. Or the conclusions of law? A. I did not.

Q. When you went to Buffalo to attend upon the motion for a continuance of the temporary injunction, what conversation did you have with Mr. Stearns upon that subject? A. I had this conversation——

MR. STANCHFIELD: Just a moment. In the absence of Judge Hooker, we object to that as irrelevant and immaterial. There isn't a particle of this evidence that contradicts or varies the testimony of the witness before the Assembly judiciary committee, and it has already been read in evidence.

THE PRESIDENT: Objection overruled.

A. I had this conversation and this, so far as I am able to remember, is the only connection I ever had with the case. I came home the latter part of the week from Albany and Mr. Stearns told me at the commencement of this action and stated that there was a show cause order returnable in Buffalo on the following Monday, the 30th; the answer had been prepared; and he asked me if I was going back Monday night to Albany and I stated I was. He asked me if I would go to Buffalo earlier in the day and go into Special Term and appear formally as the attorney of Judge Hooker and himself and interpose an objection to the granting of an injunction upon the return of that show cause order. I said to him that I would do so, although I knew nothing about the case at all, and if it was not necessary to do anything except in an informal way, I would do that. And I did so. The following Monday when I returned to Albany I went to Buffalo in the afternoon instead of leaving home late at night as I usually did, and I met Mr. Larkins at Special Term and the case was

called and in a perfunctory sort of a way he stated something about the general purpose of the lawsuit, and I very formally objected for Judge Hooker and Mr. Stearns and the court denied the application for the injunction and I walked out of the court room, and I have never heard anything about that lawsuit from that time until last fall.

Q. Was there any argument upon the motion? A. Not while I was there.

Q. But it was disposed of before you went away, wasn't it?  
A. Yes, sir; unless you call the most formal presentation an argument; I did not regard it as an argument.

MR. COMAN: That is all.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. What was the date of that, Warner? A. It was on the 30th of December, as I remember it, on a Monday.

Q. Wirtner was the plaintiff in the suit? A. Yes, sir.

Q. Represented by Mr. Larkins? A. He was.

Q. Mr. Larkins was there? A. Yes, sir.

Q. You were the attorney of record—— A. I appeared there formally——

Q. Wait and answer my question. You were the attorney of record for Stearns and Hooker? A. I am so advised by the judgment roll.

Q. Will you answer my question? I asked you if you were the attorney of record for Stearns and Hooker? A. I don't know that I can answer the question in that form. I appeared as their representative there at that time, yes, sir; whether I have gone on the record, I don't think I was.

Q. Do you mean to say you don't know whether you were their attorney or not? A. I appeared there as their counsel at that time.

Q. Are you splitting hairs between "counsel" and "attorney?"  
A. Oh, no, not at all.

Q. Were you their attorney? A. I suppose I was, if I was their counsel.

Q. And did you appear before Mr. Justice White in opposition to the motion to continue the injunction? A. Very formally, yes.

Q. I didn't ask you about very formally. I asked if you appeared there? A. I did.

Q. So that the attorney for the plaintiff was there and the attorney for the defendants was there? A. Yes, sir.

Q. Was Mayor Scannell there, the mayor of Dunkirk? A. I think he was.

Q. He was the then mayor of Dunkirk? A. Yes, sir.

Q. Was Mr. Nugent there? A. I think he was, yes, sir.

Q. Now, will you state who opened the matter, whether by argument or otherwise, so as to invite the attention of Judge White as to your errand there? A. I think Mr. Larkins or Mr. Stearns.

Q. Now, do you recollect in a general way the substance of what he said? A. Why, I can recollect this—do you wish me to state?

Q. Yes. A. He stated to the court that he had a show cause order, giving the title of this action, and stating that it was a taxpayer's action to restrain waste; that that show cause order was returnable that afternoon at 2 o'clock to show cause why a temporary injunction in this action should not be granted. I don't think the statement was more than I have stated. I may be in error about that. That is my recollection.

Q. Well, after he made his statement, then what took place? A. I think I stated to the court that I appeared there as the representative or counsel or attorney of Stearns and Hooker, and I desired to object to the granting of an injunction.

Q. After that then what took place? A. I think the court—I am not clear about this—the court at some time sent us into the side room to talk this thing over; whether he intimated that he would deny the application before we went in there, or whether we went in there and came back and he then denied it, I am not just sure; one of the two things occurred.

Q. Didn't he at that time by something that he said make an endeavor to induce a settlement of the matter? A. Oh, yes, I think he did that, and I think he sort of gave the impression to us probably that the injunction would be denied anyway; I gained that feeling in some way.

Q. When you went down there that morning, you say you went in pursuance of a request of Mr. Stearns? A. Yes, sir.

Q. Did not you take along with you to use in opposition to the motion to continue this injunction the answer in the case verified by Mr. Stearns? A. I think I did, and I think it was signed—that my name was signed to it in typewriting as attorney at the same time. I don't think I paid any attention to it or read it.

Q. It was verified by Mr. Stearns? A. It was, yes, sir. It so appears now. I presume I took it with me then and I presume I handed it to Mr. Larkins at that time.

Q. You say your recollection is you did not dictate the answer? A. I don't think I did.

Q. Do you know who did? A. I don't. I have examined it and it doesn't seem like my phraseology. I cannot convince myself that I did.

Q. Well, at the best, it is a matter of memory with you as to whether you did or did not? A. Why, yes, all these things—of course it is a matter of memory.

Q. You never had any talk with Judge Hooker in reference to it? A. None that I can remember.

Q. So far as your knowledge goes, he did not know what was in the answer, it was not shown to Judge Hooker? A. I never had any talk with Judge Hooker and don't know whether he knew anything about what was in the answer.

Q. Judge Hooker was not present in Buffalo before Judge White? A. No.

Q. Were the findings of fact at the time the judgment was obtained dictated by you, do you remember? A. I never saw them, Mr. Stanchfield, until last fall in the judgment roll.



MR. COMAN: Mr. Farnham you may take the stand.

MR. STANCHFIELD: Mr. President, I object again to this method of procedure. We have some right here to rely upon stipulations made in this proceeding by counsel on the other side. I want to call your attention to this statement made by Mr. Coman, on page 705 of this record: "I simply desire to make this statement, Mr. President, that if any portion of the testimony embodied in this record relating to the Wirtner judgment is put in issue by witnesses called upon behalf of Justice Hooker, it is the intention of counsel for the Legislature to require the attendance of Justice White personally and of every witness who has been sworn upon this matter in rebuttal." Now, there is not any situation presented here of any issue tendered by the evidence that we have introduced that tends to contradict the testimony that was introduced before the Assembly judiciary committee. There is corroborative evidence of it and explanatory evidence of it, but nothing in the nature of contradiction. There is not a syllable of contradiction between Justice White and Justice Hooker as to what took place between them.

THE PRESIDENT: What do you say, Mr. Coman?

MR. COMAN: Mr. Stearns testifies on page 854 of this record, for instance, that Mr. Larkins started to tell Judge White what the pleadings contained, and Justice White stopped him and said he understood very well what was contained in the pleadings, and that Mr. Farnham stated to Justice White that the city of Dunkirk, the mayor and the common council had not appeared in the action and were in default, and that as he understood from the members of the common council and Mr. Scannell, the mayor, they had not defended, and he had not been directed to take any steps in the matter. There are numerous matters in the testimony of Mr. Stearns contradictory to the evidence given by Justice White; I think that, if only in fairness to Justice White, he should be permitted to take the stand and testify in answer to this evidence.

MR. STANCHFIELD: This is not a controversy between Stearns and White and Farnham and Wirtner; this evidence is only relevant and material if there was an issue tendered by the attitude Judge Hooker takes, and there is not any controversy between Justice Hooker and Justice White.

Now, All this testimony has been read in evidence, and it strikes me as peculiarly unfair that the presiding officer should allow them first to read it, then hear our case, and then call these witnesses to the chair upon the theory that there may be some contradiction upon an immaterial issue that in no way relates to Judge Hooker.

THE PRESIDENT: This evidence was brought out by you, Mr. Stanchfield, was it not, in the examination of Mr. Stearns?

MR. STANCHFIELD: Not with reference to Judge Hooker.

THE PRESIDENT: Not with reference to Judge Hooker, but with reference to the proceeding of which Mr. Stanchfield spoke.

THE PRESIDENT: You may call your witness Mr. Coman.

BERT E. FARNHAM, called as a witness, being duly sworn, testified as follows:

By MR. COMAN:

Q. Mr. Farnham, you were a witness in the investigation before the Assembly judiciary committee? A. Yes, sir.

Q. You may state whether you dictated the findings of fact and conclusions of law which were signed by Justice White in the Wirtner case. A. I did not.

Q. Or any part of them? A. No part of them.

Q. Who did? A. I don't know who dictated the findings of fact, the conclusions of law were dictated in Buffalo by Mr. Stearns.

Q. Do you know whether conclusions of law were prepared—certain conclusions of law—before you went to Buffalo? A. Yes, sir.

Q. And were they attached to the findings of fact? A. Yes, sir.

Q. What was done with those after reaching Buffalo? A. They were replaced by those other findings drawn in Buffalo; I think the original roll will show two different typewriters.

Q. Who do you say dictated those? A. Those conclusions of law?

Q. Yes. A. Mr. Stearns.

Q. You refer now to the last ones? A. Yes, sir, the last ones.

Q. Did you prepare the judgment, Mr. Farnham? A. My recollection, sir, is that the papers were all prepared before we went to Buffalo.

Q. The judgment and all? A. Yes, that is my recollection, I think those were made there. I entered the judgment and filed the judgment roll after I returned to Dunkirk.

Q. Mr. Farnham, in order to clear up a misunderstanding, do you know who prepared the findings of fact? A. I do not.

Q. Or the conclusions of law in this case as originally prepared before you went to Dunkirk? A. I do not.

Q. Or the judgment? A. I do not.

Q. Do you know who dictated the answer in this case? A. I do not.

Q. Were you present at an interview between Justice Hooker and Mr. Stearns and yourself, shortly after the summons and complaint were served in the Wirtner case? A. I was in the office the day Justice Hooker called; in and out of the various rooms; I was not there taking part in that conference and I do not know the ground covered by that conference.

Q. Did you know the Wirtner case was under consideration and being talked about? A. I so understood it.

MR. STANCHFIELD: He asked you if you knew. A. Yes.

MR. COMAN: Was Mr. Wirtner there? A. I cannot recollect that Mr. Wirtner was there.

MR. FOELKER:

Q. Did you know the conversation referred to the Wirtner case? A. Yes.

Q. Will you state to us how you came to know this fact? A. I heard fragmentary sentences of their conversation; I was not present during it and therefore I cannot give you any connected story of what they were talking about, any more than I heard them mentioning the Wirtner case in the office that day—the only occasion upon which I saw Judge Hooker there.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Who comprised the firm of Stearns, Warner & Farnham? A. Mr. Stearns, Mr. Warner and myself.

Q. Mr. Stearns has testified and Mr. Warner has testified that Judge Hooker was not there when the answer was prepared. A. I don't say he was.

Q. Just follow my question—or when the findings of fact and conclusions of law were prepared. You agree in that statement? A. I don't know whether he was or not.

Q. You never saw him there? A. Only on this one occasion.

Q. Were there any other lawyers connected with that firm except you three? A. None that I know of.

Q. Did you have any clerks in the office to draw pleadings? A. No, sir.

Q. You had a stenographer? A. Yes, sir.

Q. That was Miss Saxton? A. Yes.

Q. Now, you say you did not draw the answer? A. I say I did not draw the answer.

Q. Or the findings of fact? A. Yes, sir.

Q. Nor the conclusions of law? A. That is true.

Q. Nor the judgment? A. No, sir.

Q. Well, what did you do in the case? A. I did not do much of anything, sir. I went to Buffalo, as I testified previously, with Mr. Stearns there on that occasion.

Q. Mr. Stearns gave you his check for \$65 for what you did in the case, didn't he? A. For what I did in the case?

Q. Yes. A. He certainly did not, that I have any recollection of; I wish he had.

Q. Do you say that Mr. Stearns didn't give you a check for \$65? A. I can't say that, no, sir; Mr. Stearns has given me a great many checks, a good many checks.

Q. Didn't he give you a check for \$65 in this case for services you rendered him in it? A. No, sir, he did not; there was no reason why he should, either.

MR. STANCHFIELD: Well, Mr. President, I have the check at the hotel. That is one of the results we are not prepared for. If we have to try this question all over again I shall expect this witness to wait until I can produce the check.

THE PRESIDENT: I will give you time to send for the check.

MR. STANCHFIELD: Yes, I can go and get it. I did not suppose they were going to be called here by parole.

THE WITNESS: I don't dispute, sir, I might have been given a check for \$65 by Mr. Stearns, or for a larger amount.

MR. STANCHFIELD: It is not only a matter of consequence to show that, but we will want to call Mr. Stearns back if we are going to try all this case over again; we have got to get these witnesses back here. If the Chair will excuse me, I will go and get the check.

THE PRESIDENT: Wouldn't it be possible to send some one for it, Mr. Stanchfield.

MR. STANCHFIELD: I will go and get the check.

Q. Mr. Farnham, are you willing to admit here upon the stand that a check for \$65 was given to you signed by Stearns and Hooker? A. I don't know, sir; I am not willing to deny it.

Q. Well, if it was given to you for \$65, what was it for if it wasn't for services in this case? A. I have no recollection. My

books would undoubtedly show it, as I kept a very careful cash account of all the cash that came through my hands.

Q. Outside of any service that you may have rendered Stearns and Hooker in this particular case, have you rendered them any other legal service? A. I hadn't felt, sir, that I had ever rendered them any legal service.

MR. STANCHFIELD: I ask the privilege, Mr. President, to go and get this check. I want it in evidence.

TRUMAN C. WHITE, being duly sworn as a witness, testified as follows:

EXAMINED by MR. COMAN:

Q. Judge White, you were sworn as a witness before the judiciary committee upon this investigation? A. I was.

Q. When a case was before you for trial at Buffalo did Mr. Larkins start to tell you what the pleadings contained and did you stop him and say you understood very well what was contained in the pleadings? A. No, sir.

Q. Did you understand what was contained in the pleadings in this Wirtner action? A. No.

Q. Or what was contained in the findings of fact or conclusions of law? A. Not until after the judgment was entered.

Q. Did you read any pleadings in this action or the findings of fact or conclusions of law before you signed the decision? A. No, sir.

Q. And was any of the pleadings or the decision read over to you or its contents stated to you before you signed it? A. No, sir.

CROSS-EXAMINATION by MR. STANCHFIELD.

Q. You are a judge of the Supreme Court of the State of New York? A. Yes, sir.

Q. You became a Supreme Court justice by an amendment to the Constitution of the State, did you not? A. No, not the last time.

Q. In the first instance? A. Yes, sir.

Q. Prior to that you had been a judge of the Superior Court?

A. Yes, sir.

Q. At this time, in January 1901, you were acting as a justice of the Supreme Court in the city of Buffalo? A. I was in January, 1901, and January, 1902.

Q. And you recall the fact that this action of Wirtner against the city of Dunkirk and Stearns and Hooker came before you for trial? A. I know the fact.

Q. Do you want this joint session of the Legislature here to understand that you signed findings of fact and conclusions of law and directed the entry of a judgment in that case without knowing what was in the pleadings, findings of fact or conclusions of law? A. Yes; except what I knew by the assurance of the attorney.

Q. I want to know if that is your desire? A. Yes, sir.

Q. If your memory of it be correct you never were apprised or it was never made known to you by statement of counsel and was not read by you before signing it? A. That is entirely true, yes, sir.

By MR. COMAN:

Q. You had been told by Mr. Stearns had you not, that the parties had substantially agreed upon what was to be done in the case? A. I think Stearns told me that; I think they were all present when the statement was made and assented to it.

Q. Justice Hooker stated to you there was no substantial contest between the parties in this action had he not? A. As I remember it.

MR. PAGE: Mr. President, may I ask a question?

THE PRESIDENT: You may.

Q. It has been testified that you heard the motion to a preliminary injunction, is that so? A. No, sir. •

Q. You didn't hear it? A. No, sir. In that connection I have taken pains to bring with me the record of the Special Term of Erie county for the 30th and 31st of December. I heard it

testified to the other day, by Mr. Stearns I think, that I had heard a motion to dissolve or continue an injunction; not having any recollection of it until Judge Hooker called my attention to it, I have for my own satisfaction a copy of the record of the Special Term proceeding for those two days, which are at your service if you want them.

By MR. STANCHFIELD:

Q. What record have you there? A. Copy of the minutes of the Special Term, Erie county, the 30th and 31st days of December, 1901.

Q. What does it purport to show? A. It shows a large volume of business on those two days and in a general way, that Judge Kenefick was doing Special Term work as well as myself.

Q. What you mean to tell us is that the record you have there shows no allusion to the Wirtner case? A. None whatever.

Q. You heard Mayor Scannell of Dunkirk when he was sworn before the judiciary committee? A. I don't think so.

Q. Weren't you in the Assembly Chamber when he was there? A. I don't remember it, I may have been.

Q. Didn't he testify that he was in your court when this motion was on for hearing? A. I don't remember it.

Q. Did you hear Mr. Warner this afternoon? A. Saying the motion was made before me?

Q. Yes. A. No; I just came in; if he said so it was before I came in.

Q. You were not here this morning when Mr. Nugent was on the stand? A. No.

Q. Mr. Warner stepped off the stand a few minutes ago and he stated he appeared for Stearns and you and Larkins for Wirtner and Mr. Larkins stated what the case was about and you said the motion must be denied if it was not adjusted; don't Scannell, Nugent and Larkins stating they appeared before you upon this motion refresh your recollection? A. I regret to have my veracity brought into question if those gentlemen state what is true in connection with that; nothing was said that made



any impression upon my mind concerning the nature or merits of this action at any time.

Q. No formal order was entered at that time? A. No formal motion was made, Mr. Stanchfield, nor informal motion.

MR. BRACKETT: May I ask a question?

THE PRESIDENT: You may.

Q. Judge White, have you seen any copy of what purports to be an order made by you in that action or was there no order made? A. No, sir, no order made, absolutely no.

Q. The fact is that there are minutes kept of Special Term work? A. There should be.

Q. Did you ever sign an order except when the clerk is present and the order made on the minutes? A. Yes, I frequently do. I presume the others do.

Q. The minutes would not of necessity show that you did not hear the application? A. It would still be possible that the application might have been heard.

Q. Is it an uncommon thing for a judge to sign a judgment upon the assurance of counsel that it is practically agreed upon? A. It was the practice before I went upon the bench, I do it every day of my life when I am upon the bench, I couldn't transact the business of the Special Term of Erie county without it, the assurance of counsel.

Q. Judge Bockes used to sign anything presented and say they must take their chances of setting it aside if it was not correct? A. I do not think that is right, it is not right with me; I usually inquire the nature of what I am asked to do and then I rely upon the assurance of the lawyers, most of them.

MR. BURNETT: Mr. President, I would like to have the stenographer read the last question asked by Mr. Coman and the answer of the witness.

THE PRESIDENT: The stenographer may read the last question of Mr. Coman and the answer.

Question and answer read by stenographer.

By MR. ROGERS:

Q. Judge White, as long as your memory is seemingly so vague or defective regarding the facts of the argument of this motion before you, are you willing to be quite sure that it is clear and accurate regarding your conversation with Judge Hooker? A. Well, I think that you, at any rate, construe my language differently from what I intended as to the motion to continue the injunction. I am positive that no such motion was made. I am not in my own mind at all vague about it.

Q. I am asked by one of the members of the joint session to ask whether Judge Hooker ever said anything to you indicating in any wise as to what the findings should be or the decision in this case. A. Absolutely no, sir; no, sir.

Q. Or the form that the judgment should take or in which it should be entered? A. Judge Hooker never has passed one word with me upon this matter subsequent to the time that he told me this case was coming down for trial and asked me to try it. That certainly covers it.

By MR. STANCHFIELD:

Q. Justice White, before you leave the stand I want to read an excerpt to you from the Dunkirk Daily Herald, under date of December 31, 1901. It reads as follows:

MR. COMAN: Just a moment. May I look at it before you read it?

MR. STANCHFIELD: Certainly you may.

MR. COMAN: I object to it as immaterial and hearsay and incompetent.

MR. STANCHFIELD: I am going to put it in the form of a question.

Q. "Decision reserved. Justice White to take time to consider injunction. The hearing on the return of the order to show cause why the injunction against Mayor Daniel Scannell and the common council restraining them from signing the lease

of the City Hall park should not be permanent, was heard before Justice White in Buffalo yesterday afternoon. He will hand down his decision after duly considering all of the points presented. The points at issue in this case are familiar." Now I ask you whether with that newspaper statement of what was going on, supplemented by the testimony of Warner and of Stearns and Nugent to the effect that they were all before you on that date and argued this motion, whether those things do not refresh your recollection as to the fact that probably you did hear it. A. Why, no. I did not hear it. I think if you will pardon a voluntary suggestion, Mr. Larkins told me the other day that I said to them to go into the other room and fix it up. That is what he said I told him. He told me that the other day. And I want to say, Mr. Stanchfield, as positively and directly as I can, that I gave that motion no consideration whatever.

Q. The question is not whether you gave it consideration. The simple question is whether all of these lawyers are mistaken and the newspapers, when they say they were before you upon the motion. A. It is not for me to characterize the testimony, is it Mr. Stanchfield?

Q. They all swear they were there. I want to know whether you are willing to swear positively they were not there, or whether you don't remember. A. I don't swear that they were not there. I simply swear that motion never received any consideration at my hands; so far as I recall or know, it was never presented to me. I can not make it broader than that.

Q. I call your attention to an article from the Evening Observer, under date of Tuesday, December 31, 1901, headed "No settlement could be made. Hearing on injunction against the mayor postponed until January 13. The hearing before Justice White in Buffalo Monday, in the matter of the injunction restraining Mayor Scannell, City Clerk Gresch, the common council and L. F. Stearns and W. B. Hooker from executing the lease of a strip of City Hall park adjacent to the Stearns building, was adjourned until 2 p. m. to-day, at the request of Attorney Warner, representing the interests of Stearns and Hooker." Now

does that in any way refresh your recollection? A. It does not change my recollection, that I gave that motion no consideration whatever at that time.

Q. Well, there is a difference, Judge, in giving it consideration and in not having it presented to you at all? A. Well, so far as I remember and have any recollection or knowledge upon the subject, it was never presented to me as a motion. If I can make it any stronger, I am willing to.

Q. Now a word more. You testified here that you never had but the one conversation with Judge Hooker? A. That is all that I remember. If there is any more I have forgotten.

Q. In the conversation that you did have with him, Judge Hooker never made the slightest allusion or reference as to what were the facts involved in the case? A. Why, no, sir.

Q. In other words he did not say a thing and he did not do a thing in any way or manner to influence or shape or control your judicial action in this case? A. Not the least, except as I desired to hear the case because he asked me to; that was the only reason.

THE PRESIDENT: Have you other witnesses, Mr. Coman?

MR. COMAN: None except Mr. Farnham, if the counsel is ready to cross-examine him.

THE PRESIDENT: Mr. Farnham, take the stand.

BERT E. FARNHAM resumed the stand.

CROSS-EXAMINATION by MR. STANCHFIELD:

Q. Mr. Farnham, I call your attention to a check dated January 25, 1902, made payable to your order, for \$65, and signed by Stearns and Hooker. Doesn't that check bear your indorsement?

A. It does, sir; yes, sir.

Q. Didn't you have the money upon it? A. As I now recollect it, I did, yes, sir.

Q. What was it for? A. For Thomas H. Larkins.

Q. And not for you? A. That is the fact as it occurs to me.

I had utterly forgotten this check. My recollection was the check was given directly to Mr. Larkins.

Q. Was it used for costs and disbursements in the case? A. I didn't hear the agreement between them. This money was gotten by me on the check and given back to Mr. Larkins.

Q. What you mean by that is, you didn't have the personal benefit of it? A. Not a penny, sir.

Q. Whose name is that under yours? A. Our druggists, friends of ours, right under our office.

Q. You got the cash upon it? A. Yes, sir, of those boys.

Q. And did you give Larkins the bills? A. Yes, sir; took them to the office of Mr. Stearns to Mr. Larkins.

Q. Why didn't you simply indorse that check over to him? A. Because it was requested, sir, that I get the money.

Q. And you went out and got the currency? A. Yes, sir.

Q. Now, did you have this judgment entered in the clerk's office? A. That is my recollection, yes, sir.

Q. I will show you a letter dated January 23, 1902, and ask you whether you wrote that letter? A. I did not, no, sir.

Q. Well, did you write a letter of which that is a copy? A. I can't tell you, sir; I don't remember it. Let me see——

Q. I didn't know but the reading of it, Mr. Farnham, might refresh your recollection? A. Why, it is—I think it is very probable, sir, that I did. I entered the judgment as I recollect it, and I do not recollect the letter, but I think it is quite possible that I might have written it.

MR. HARTMAN: Mr. President, may I ask you to have the letter read?

THE PRESIDENT: We won't have it read unless it is offered in evidence.

Q. Mr. Farnham, has the firm of Stearns, Warner & Farnham dissolved? A. Yes, sir.

Q. When did they dissolve? A. Two years ago last January as I recollect it.

Q. And you and Mr. Warner went out? A. Yes, sir.

Q. Was there litigation between Mr. Warner and Mr. Stearns?

A. There was.

Q. So that the firm broke up with no very warm or friendly feeling? A. Mr. Stearns' relations and mine have always been, so far as I know, warm and friendly.

Q. The litigation is between Warner and Stearns? A. I had absolutely no interest in it.

Q. I say, the litigation is between Warner and Stearns? A. Yes, sir; yes, sir.

Q. Now, did you read over the pleadings in this case? A. I presume I did. I haven't any present recollection about it.

Q. Do you recollect whether or no you had anything to do with the preparation of it for trial? A. I don't recollect that there was any preparation made.

Q. Well, there must have been conferences between some one and somebody in which it was arranged between the plaintiff and his attorney that the facts should be virtually agreed upon? A. I had no conference with the plaintiff's attorney so far as I now recollect of.

Q. I didn't know but what you might have had. You said you paid him the money. A. That was afterwards.

Q. You say that you don't recollect that you had any? A. I don't now recollect any.

Q. Did the plaintiff's attorney reside right there in the city of Dunkirk? A. Yes, sir.

Q. Now, you had been for the year preceding the obtaining of this judgment the city attorney for Dunkirk? A. Yes, sir; part of the year, not quite all of the year; nearly so.

Q. Now, after this suit was commenced did you ask the mayor as to whether or no you should defend in behalf of the city? A. I wrote him a letter, a copy of which I have if you would like it.

Q. I should like to see it. A. Two of them in fact, Mr. Stanchfield.

(Witness hands papers to Mr. Stanchfield.)

Q. I don't know that I care particularly about putting them in evidence, simply I will ask you the fact; did you in two several letters call the attention of the mayor of the city of Dunkirk to

the pendency of this action? A. I did. I stated to him in the first letter that I had heard of the action being brought in the paper and asking briefly that I be put in possession of the papers. To that I received no reply. In the meantime a difference of opinion developed between the counsel and the mayor and I wrote him again, calling his attention to that situation, and asking him to call a meeting that I might receive some instruction as to what I should do, if anything, in the matter. From that nothing came. These are the copies of those letters.

MR. STANCHFIELD: That is all, Mr. Farnham.

RE-DIRECT EXAMINATION by MR. COMAN:

Q. When you went to Buffalo before Justice White, you didn't go as city attorney, did you? A. I didn't.

Q. You went there as counsel for Hooker & Stearns? A. I went because Lester asked me to go.

MR. COMAN: I ask the check shown witness marked for identification. Check marked, "For identification, July 18, '05. D. N. B."

Q. I show you exhibit for identification, the check which has been shown you (showing check to witness), and ask you to state the circumstances under which you received that check and what conversation took place between you and Mr. Stearns and Larkins concerning it. A. Mr. Stearns gave me the check and asked me to go and get the money on it and I did so down to the drug store, and brought it back, and the money was handed to Mr. Larkins.

Q. Who handed it to him? A. Either Mr. Stearns or myself, I won't be positive now, sir.

Q. Anything further said? A. Yes, there was other conversation. I don't know that I can give you the details of it.

Q. Give the substance of it. A. I got from it, it was my understanding, that this was to clean up the Wirtner matter.

MR. COMAN: That is all. I offer the check in evidence.

THE PRESIDENT: Received.

The check is marked "Exhibit A. July 18, 1905. D. N. B.," and is as follows:

"DUNKIRK, N. Y., Jan'y 25, 1902.

"No. 48

"Lake Shore National Bank. Pay to B. E. Farnham or order, Sixty-five dollars. \$65.00.

"STEARNS & HOOKER."

Endorsed on back: "B. E. Farnham. Van Seater & West. Cancelled. Paid."

THE PRESIDENT: Is that all, Mr. Coman?

MR. COMAN: That is all.

THE PRESIDENT: Anything further, Mr. Stanchfield?

MR. STANCHFIELD: Just a moment.

SENATOR BRACKETT: I move that when the joint session adjourns this afternoon, we adjourn to meet to-morrow morning at half past nine.

SENATOR SAXE: There are a good many here who feel that this proceeding ought to go on to-night; who feel they can sum it up to-night and adjourn the proceeding.

THE PRESIDENT: That is not involved in this motion, which is that when we adjourn to-day, we adjourn to half past nine to-morrow morning.

SENATOR ELSBERG: May I be permitted a suggestion that if we meet to-night and sit until quite late, we should not want our full allotment of time to-morrow morning. I think that is involved in the motion.

SENATOR RAINES: After consultation with counsel on both sides, I move that each side have three hours for the summing up, the time to be divided as each side may choose, and under the rule the counsel for the Legislature, or somebody representing the proceeding, has of course the closing argument.

THE PRESIDENT: Mr. Stanchfield, I understand this closes it. You have no further evidence?



MR. STANCHFIELD: Yes, sir.

THE PRESIDENT: That may be entered upon the record. The question is upon the motion first of the Senator from the Twenty-eighth.

SENATOR BRACKETT: I appreciate what counsel on both sides say, that it will be practically impossible for them to proceed with their argument to-night, where the testimony has only just closed. There will not be a single minute of time gained in attempting to force the argument on this evening. If they can get a skeleton of the argument framed and get ready, time will be saved by adjourning until to-morrow and then we can make an early start in the morning in order that there may be no question but that the entire summing up can be finished to-morrow. That is why I have made my motion. Now when the question of the Senator from the Forty-second that is involved in his motion, comes up, I propose if it is the concensus or wish of the body, to amend that the three hours on each side need not be continuous, but if one side wishes to argue and then the other to argue, to alternate, provided only that the prosecution has the last argument, that they may divide it up any way they see fit.

THE PRESIDENT: The question is on the motion of the Senator from the Twenty-eighth, that when the joint assembly adjourns to-day, it adjourns to meet at 9.30 to-morrow morning. Those in favor say aye. (Cries of aye.) Opposed, no. Motion is carried.

The question is upon the motion of the Senator from the Forty-second, that three hours be given each side for the purpose of the closing argument.

SENATOR BRACKETT: I move as an amendment that it shall be divided as counsel may agree. I don't mean that the three hours, that we shall trench on the proposition that each side shall have three hours, but that the three hours may be divided, the first hour and a half to one side and the second hour and a half to the other, perhaps, provided only we conform to the rule that the last argument shall be in the hands of the prosecution.

**THE PRESIDENT:** The Senator from the Twenty-eighth moves that the argument shall take place in the manner agreed upon between counsel on each side, providing counsel for the Legislature has the closing argument. Those in favor say aye. (Cries of aye.) Opposed, no. (Cries of no.) Three hours is given each side, to be arranged as counsel may agree among themselves, providing, however, that counsel for the Legislature has the closing argument.

**MR. CARR:** May I be permitted to inquire if counsel cannot agree, cannot arrange this——

**THE PRESIDENT (interrupting):** The Chair will then direct counsel for the respondent to proceed three hours, and then counsel for the Legislature to close for three hours.

**MR. CARR:** Will the President permit me to make this suggestion? I assume, I don't know what may be the fact, that with one counsel speaking for the respondent and two perhaps speaking for the prosecution, would it not be proper that one counsel for the prosecution speak first, and counsel for the respondent be then heard, and counsel for the Legislature close the argument?

**SENATOR BRACKETT:** I hope the final order may not be made on that until to-morrow morning. If it shall be determined that they cannot agree, that matter shall then rest for the determination of the President or the joint session.

**THE PRESIDENT:** It certainly will. That is all the Chair intended to indicate.

**SENATOR BRACKETT:** My motion is that it is but fair after the main argument of the prosecution is somewhere made that the defense should, if it cares that they should have an opportunity to be heard so as to respond to any points that may be made.

**MR. CARR:** That is the reason for the suggestion that I make.

**SENATOR GRADY:** There is a matter still to be determined, the hours of the sessions for to-morrow, to make the alteration in the hours provided for by the rules, and I therefore move that the hours of the joint session to-morrow be from 9.30 in the morning until 12.30, and from 2.30 in the afternoon until 6.

**THE PRESIDENT:** The Senator from the Fourteenth moves the session to-morrow extend from 9.30 until 12.30, and from 2.30 until 6.

**SENATOR GRADY:** The purpose of the motion, if I may be permitted to state, is done that there may be an understanding arrived at that the sessions of the Senate and Assembly as separate bodies will take place after 6 o'clock, so that the members of both Houses may be prepared for any action that may be taken in either House for the purpose of securing a full attendance of members.

**SENATOR BRACKETT:** I want to call the attention of the Senator to the fact that his motion was from 9.30 until 12.30. Why not start at 2 until the close of the argument.

**SENATOR GRADY:** I made it 2.30 advisedly.

**SENATOR BRACKETT:** Two is what you said.

**SENATOR GRADY:** Oh, no, 2.30; from 2.30 until 5.30.

**THE PRESIDENT:** The stenographer will take the motion as corrected by the Senator from the Fourteenth.

**SENATOR GRADY:** The Senator is under the impression, in making the long recess from 12.30 until 2.30, I have done it simply for my own convenience entirely or for the convenience of the members of the joint session, but I can understand if there should be a division of time between counsel, if the case should be opened by the respondent at 9.30 and answered by the prosecution up to 12.30 o'clock, that the man who is going to say the last word for the respondent would like to have from 12.30 until 2.30 to get ready.

**MR. CARR:** Suppose he had to start in, Senator, before 12.30, what then?

**SENATOR GRADY:** Then he has got three hours right ahead of him.

**SENATOR COGGESHALL:** I rise on a question of inquiry.

**THE PRESIDENT:** The Senator will state his question of inquiry.

SENATOR COGGESHALL : Suppose we should not start at 9.30. Suppose we start at 10, counsel may not be here or something may occur that the argument cannot begin until 10, then counsel, if he occupies that time, may have only two hours and a half. It seems to me the best thing we can do is to vote to meet here to-morrow morning at 9.30, and sufficient for the day is the evil or the time thereof, and when the argument shall have gone on three hours, then take an adjournment until an appropriate time and not settle upon that until we know what the arrangement of counsel is; when they have gotten through, then adjourn, but don't let us undertake to fix it this afternoon, let us fix only the time we meet, not the time of adjournment. Why not agree to meet at 9.30, and then when the time comes to adjourn, let us fix that.

SENATOR RAINES: What is the motion before the body?

THE PRESIDENT: The motion before the body is the motion of the Senator from the Fourteenth, that when we meet to-morrow morning in joint session, we meet at 9.30 and continue the session until 12.30, and meet at 2.30 and continue the session until the close of the argument.

MR. ROGERS: I simply want to inquire what possible use there is of changing the hour of meeting in the morning from 10 until 9.30, unless it is to gain a half an hour in the session. We are making a change in the hour of recess from 1 to 12.30. Why not leave the hour of meeting at 10 as usual, and the hour of recess at 1 as usual? Then we have three hours which the Senator's motion now indicates he desires to give them.

SENATOR GRADY: That would partly be true if it were simply the convenience of the members of the Senate and Assembly that was to be consulted at this stage of the proceedings, but I take it no matter how the argument is divided there will be preparation required upon the part of one or maybe two of the counsel during the recess to-morrow, between 12.30 and 2.30 o'clock, and it is for that reason I am putting on the additional half hour.

**MR. ROGERS:** For the convenience of counsel.

**THE PRESIDENT:** Those in favor of the motion of the Senator from the Fourteenth will signify it by saying aye. (Cries of aye.) Opposed, no. (Cries of no.)

It seems to be carried and it is carried. The joint assembly will convene promptly at half past nine o'clock to-morrow morning.

**SENATOR RAINES:** If we had made any hard and fast rule that could not be altered if necessity required it, I should have objected to these motions, because I propose, if possible, to have a full attendance of the members of the Senate to-morrow on this argument and before the vote when it is taken, and I therefore desire to give notice of a call of the Senate which may take up some of the time that has already been allotted.

**MR. ROGERS:** I desire to give a similar notice that a call will, if necessary, be made in the Assembly.

**SENATOR RAINES:** I move, Mr. President, that the joint assembly do now adjourn.

**THE PRESIDENT:** The Senator from the Forty-second moves that the joint assembly do now adjourn. All in favor say aye; all opposed, no. The joint assembly stands adjourned until to-morrow morning at 9.30.

At the hour of 4.45 p. m. the President and Senate returned to the Senate Chamber.

The clerk called the roll and the following Senators responded as present:

<b>Alds</b>	<b>Cooper</b>	<b>Foley</b>	<b>Kehoe</b>	<b>Prime</b>
<b>Armstrong</b>	<b>Cordts</b>	<b>Frawley</b>	<b>Lewis</b>	<b>Raines</b>
<b>Brackett</b>	<b>Cullen</b>	<b>Gardner</b>	<b>Malby</b>	<b>Riordan</b>
<b>Brown</b>	<b>Davis</b>	<b>Gates</b>	<b>Marks</b>	<b>Saxe</b>
<b>Burr</b>	<b>Drescher</b>	<b>Goodsell</b>	<b>Martin</b>	<b>Stevens</b>
<b>Carpenter</b>	<b>Elsberg</b>	<b>Grady</b>	<b>McCarren</b>	<b>Tully</b>
<b>Cassidy</b>	<b>Fancher</b>	<b>Hasenflug</b>	<b>McEwan</b>	<b>Warnick</b>
<b>Cobb</b>	<b>Fechter</b>	<b>Hawkins</b>	<b>Page</b>	<b>Wilcox</b>
<b>Coggeshall</b>	<b>Fitzgerald</b>	<b>Hinman</b>		

Mr. Raines moved that a committee of three be appointed by the President to report a resolution to-morrow morning relative

to the procedure to be taken in the matter of certain newspaper articles.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President appointed Messrs. Rains, Elsborg and Grady as such committee.

Mr. Raines moved that the Senate adjourn until 9.15 a. m. to-morrow.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon, the Senate adjourned.

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#### WEDNESDAY, JULY 19, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. A. C. Youmans.

The journal of yesterday was read and approved.

The hour of 9.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly chamber, to meet in joint session.

#### JOINT SESSION—ASSEMBLY CHAMBER.

The journal of joint session read.

THE PRESIDENT: If there are no corrections the journal will stand approved as read.

Mr. Coman, have you agreed upon the procedure for the summing up.

MR. COMAN: Yes, sir.

THE PRESIDENT: Will you please state it.

MR. COMAN: The arrangement between counsel for Justice Hooker and ourselves is that Mr. Stevens will open the argument, speaking for an hour and a half and Mr. Carr will follow, and the counsel for the Legislature will close the argument.

THE PRESIDENT: We are ready to proceed, Mr. Stevens.

MR. BRACKETT: In the matter of Erving Wardman who was subpoenaed as a witness in this matter, I desire to make a

motion, (cries of louder) and to preface my motion by a statement of my own views in the matter. On the 12th day of July there was published in the New York Press a statement, which without attempting to give the language, intimated that there was an effort being made corruptly to clear Judge Hooker of the charges that were pending before us, by the use of "boodle." Under the authority of this joint session a subpoena was served on a man who was supposed to be the responsible head of the paper, and who could and would give this Legislature the information that was desired as to who wrote the article with a view of investigating and seeing whether there was any basis for the charge. Personally, Mr. President, I cannot conceive of a man or of a paper desiring to make a charge of that kind without an anxiety and continued anxiety to make good. And if there is a basis of truth of it or if it is founded on anything which looked like truth without doing everything possible, and this without being urged, to give such evidence as will show that that state of affairs charged exists.

Mr. Wardman, having been subpoenaed, came here and was examined. It developed in the first five minutes of his examination that the article which appeared under an Albany date line and which certified to the reading public that it came from the regular correspondent of the Press at Albany, was not at all written by the regular correspondent in Albany nor by anyone in Albany, but was an account that was made up by taking certain Associated Press dispatches which were entirely matters of news and as to which there was nothing offensive, and by prefixing to it and affixing at the end a statement which was calculated to make it sensational, in the charges to which I have referred.

I am free to say to you, Mr. President, and members of this body, that from the instant it developed that the charge was not made by anybody here on the ground who might be supposed and who would be supposed to be speaking from personal information that he had gleaned here, but was manufactured in the office of the paper, that any interest which I felt in the transaction very rapidly ceased. And my only wish was to have it

thoroughly understood by those who saw the original article, so far as was possible, that they were misled in the statement that it was an article that came from Albany or came from the regular correspondent of the press. That correspondent was not in the city at the time and his substitute has come and testified that he knew nothing of the article, and the proof is plenary that it was manufactured in the office of the paper.

I am not familiar, Mr. President, with the ethics of newspaperdom. If that is fair and decent treatment, either to this Legislature or to the public, and the gentlemen who has enunciated it are willing to stand for that kind of methods, they certainly shall have the satisfaction, for all of me. As I said before, I cannot conceive of any one who desires to expatiate out of his own imagination to make a charge of that kind who, would not run like a bridegroom to his chamber to give the proof that would result in punishment. (Laughter) He would have no excuse to offer nor declination to make; but that is a matter of purely personal ethics with which each one must deal for himself.

Having these views, Mr. President, which very likely differ very much from the views of other members of the joint session—differ, I know, from some with whom I have talked and who favor a very different treatment of the situation—I move that Mr. Erving Wardman, the editor of the New York Press, be discharged from further attendance under this subpoena.

THE PRESIDENT: The question is upon the motion of the Senator from the Twenty-eighth, that Mr. Wardman be discharged from further attendance upon the meetings of the joint assembly. Those in favor say aye. Opposed, no. Seems to be carried; it is carried.

THE PRESIDENT: We are ready to proceed, Mr. Stevens.

MR. STEVENS: Mr. President, have you any direction at which place or where I shall stand in addressing the joint session?

THE PRESIDENT: I suggest you stand on the second step of the aisle, just back of the desk; a step beyond that.



SENATOR BRACKETT: Would that be better than standing directly in front and facing us?

THE PRESIDENT: Yes, I think so. I think there is no doubt that is the best place.

Your time will expire. Mr. Stevens, under the arrangement, at 11.30 o'clock.

MR. STEVENS: Mr. President and gentlemen of the Legislature: I have been requested by Mr. Coman to assist him in the final presentation of this case, and in the division of the labor I have been requested to address myself to that branch of the case, or those branches of the case, known as the Fredonia postoffice cases. That involves necessarily the assumption of the legal power possessed by you to remove Justice Hooker upon charges for the causes stated in the charges which have been adopted by the Legislature.

It would give me great satisfaction personally could I be permitted to address you upon some legal propositions which have been enunciated here, but the time forbids; it is impossible, and I must make the assumption, as I have said, of your right to proceed to remove upon the facts which may appear in regard to these postoffice cases.

I shall be compelled, gentlemen, at the outset, to ask your indulgence, first, upon the ground of the state of the weather, which, of course, you are all aware makes it exceedingly difficult to address you at all in any place; and, secondly, upon my lack of familiarity with the acoustic properties of this chamber. It will necessarily require that I husband my physical powers as much as possible in this state of the weather, and yet I desire to be heard by every gentleman here in whatever I may say, and I shall deem it a favor if I do not make myself entirely clear if you will call upon me to speak louder, so I may make myself comprehended by all the persons present. •

The importance of this case depends upon the solution of the question what causes are adequate and proper for the removal of a justice of the Supreme Court. Unquestionably there should be moral standards governing the actions of all men. Unques-

tionably there should be moral standards governing the actions of justices of the Supreme Court, and the law has recognized the fact that if in his actions a justice of the Supreme Court does not reach a certain moral standard, if he does things which evince moral turpitude, moral dereliction, that he is not fit to remain upon the bench of the Supreme Court and that he should be removed by you from that position.

In that position I am glad to say that there is no dispute, at least between the counsel for the respondent and myself. Counsel for the respondent, who has already addressed you upon the question, has placed himself deliberately upon the record in words to which I call your attention, at page 804 of the printed proceedings, in which he says—and I read them in order to assure absolute verbal accuracy—“If Judge Hooker knew that Ball never intended to do any work, and secured the place for him knowing that he never meant to perform services, he ought to be removed from his place or convicted of an offense.”

It is my contention here that, as a matter of fact, Mr. Justice Hooker has committed the precise offense which is named by Mr. Stanchfield in the sentence which I have quoted, and it is also my contention here that in regard to the Fredonia postoffice cases he has committed numerous other acts upon the same moral plane, deserving of the same moral censure and condemnation, and deserving the same action at your hands which Mr. Stanchfield says he deserves if he has committed the one particular act which he named.

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So that the first question to which we will have to address ourselves is what acts Mr. Justice Hooker has committed. Beyond that, if I shall fail to establish to your satisfaction his commission of certain acts which deserve the censure which has been placed upon these acts by these words, it stands absolutely undisputed here by the evidence of Mr. Justice Hooker himself that he has committed certain acts which I denominate and brand as evincing moral turpitude, as evincing a lack of moral sensibility, as showing the possession of moral standards upon his part which make him unfit to administer the laws of the land, but which acts upon his part he says are right, proper and per-

formed by him in the conscientious discharge of his duties as a citizen and as a public officer and for which he deserves commendation. So that outside of any questions of fact in the case wheresoever, there will be presented for your consideration two moral standards, and Justice Hooker must be judged by one of them. He must be judged as a citizen or a justice of the Supreme Court by the standard which I shall not set up for you to act upon, but which I shall simply point out to you, or he must be judged by the other which makes his acts commendable and worthy of praise instead of the denunciation which I believe should be heaped upon them.

Now it is with somewhat of reluctance that I address myself to a consideration of the facts and details in this case, for the reason that for weeks the printed evidence in this case has been in your possession and I must assume that you have carefully studied it and are familiar with it. But my duty renders it necessary that I recite the details somewhat, and gentlemen, I shall not and do not apologize for calling your attention somewhat in detail to the circumstances of this case for the purpose of grouping them properly together so that you may appreciate and understand the precise importance and effect of each act as it occurs.

Now, it is always in addressing ourselves to questions of fact to find out what is undisputed, that which is unquestioned, and in the first place we find that in the village of Fredonia, a town of about 4,000 inhabitants, that in the year 1898, one Arthur Moore, was postmaster; that he had as assistants in that office four clerks. We find that the clerical assistance in that office was entirely adequate to discharge the duties of that office, and four clerks has been from that time to the present time entirely adequate in the office, and the clerks themselves could perform the duties of that office without the particular attention of the postmaster to any of the details. Mr. Moore testifies that only two hours were given by him to the duties of the office.

The next proposition is that there was at that time in October, 1898, no laborer employed in that office and never had been whose sole duties were to sweep out the inside room where the

clerks sorted the mail and placed it in condition, to scrub the floor and to wash eight windows, and that sweeping out has continued to be done by the clerks and that all the duties of laborer in that office were discharged and invariably been discharged by the employment of some scrub woman of the town, and the total cost of that is displayed by the figures exhibited in that year, at the sum of \$12 per year.

It is not a matter of guesswork or interest we find that it was the sum asked for by the postmaster, \$3 per quarter, and \$3 was the sum paid and the work was done for \$12 per year.

In October, 1898, Frank P. Ball was appointed laborer in that office to discharge those duties worth \$12 per year at a salary of \$600; in the following January he was created clerk in that office at the same salary of \$600 per year, and retained that position until December, 1902, and received \$2,532 from the Government and performed not one hour's service for that money.

We find next, that on the 12th day of January, 1899, five clerks were appointed in that office additional—Minerva Jeffrey, Ora Caldwell, Thomas O'Neil, Henry Pemberton and George Cooper—at salaries of \$600 each, and we find that out of those clerks, I omit all mention of Minerva Jeffrey, Thomas O'Neil performed no services as clerk, and the first day of April, 1899, he was transferred to the position of carrier in the office and thereafter was paid the sum of \$126 for services of clerk which he did not perform. And the undisputed evidence is, Ora Caldwell was appointed clerk at a salary of \$600 per year on the 12th of January, but he did not enter upon his duties or perform any services, whatsoever, until the following first day of July, and for the time, between the 12th of January, 1899, and the 1st of July, 1899, he was paid the sum of \$296, I think, for doing absolutely nothing, and a portion of that time, you will recollect, he was engaged in the locomotive works in the city of Dunkirk.

We find next, in the month of May, 1900, one Katherine Clark was appointed to a clerkship in that office and retained that clerkship down to August, 1903, and was paid for her services in that office the sum of about \$2,600; she was actually there and performed services, but she performed no services but what

the force of the office before she was appointed, and the force that remained in the office after she was removed, was entirely adequate to discharge; although we cannot say no services were performed, we can say she was paid for services which should have been rendered by other clerks, and it was their duty to render, and did render before and after her appointment; so the Government, by appointing Katherine Clark to that office and retaining the other clerks when she was appointed, was the loser in the sum of \$600.

We find the next understood fact to be that Maurice Hooker, in the month of January, 1902, was appointed laborer in this office at a salary of \$400 per year, to perform the slight and almost no duty of scrubbing up the office, which were worth at most \$12 per year; he was appointed at the rate of \$400 per year, and that for these services there were paid in the next year and a half the sum of \$600. So that we start out in this case with the unquestioned facts that the Government of the United States was defrauded, wronged out of the sum of \$6,000, or, if you omit entirely from that category the sum paid to Katherine Clark, that it was wronged and defrauded of the sum of somewhere about \$3,400 or \$3,500 for no services whatsoever except the performance of the paltry service worth \$12 per year. The question at once becomes, who is responsible for this crime? A fraud has been committed. The offense of defrauding the United States is a felony. Now, we have a very narrow circle of persons who are concerned in this transaction; we have first Warren B. Hooker, who made each and every one of the recommendations, and who instituted the proceedings for the appointment of these persons and asked to have done precisely what was done in each and every instance. We have next either or both, at Washington, a representing the government of the United States and George W. Beavers; when we return to Fredonia next to follow it out, we have first, the postmaster, Arthur R. Moore, and after he retired from office in November, 1899, we have the postmaster, Melvin H. Taylor, an appointee of Warren B. Hooker, and lastly we have the individual who received the money. We have, in the first case which I have named, Frank P. Ball. Now, one

or all of these persons put together, or one portion of them, have unquestionably defrauded the United States, and the question of inquiry upon the facts presented to you is, which one or what one? If we find the fraud was committed by somebody there other than this respondent, that may tend to exonerate him. But I ask your attention, gentlemen, to the plea with which we are met by the counsel for the respondent in this case, if I rightly appreciate the arguments which they presented to the Judiciary Committee of the Assembly in this case. Let us begin and analyze the case; let us get down to a close scrutiny of the facts and see what we find. Where would you go? To Washington? Would you approach the department at Washington with all its vast ramifications, with all the innumerable post-offices in the country? If you would find that the recommendation was made to the department at Washington by a gentleman who has been the official dispenser of patronage in the district by the common consent and custom of the country—Warren B. Hooker; we find that that gentleman is the leading citizen of Fredonia. He is a justice of the Supreme Court; and so, when we haul George W. Beavers up before the bar of public opinion or any other bar whatsoever, what is the answer? Why, George W. Beavers says: "Is it possible that I shall be held down to inspect the closeness and minuteness of the appointment of Frank P. Ball, as a laborer in the postoffice at Fredonia, when the member of Congress and justice of the Supreme Court comes here and asks the appointment? Cannot I rely upon him as to the necessity? Cannot I rely upon him as to the propriety of the case? Is it possible, I ask you, is it a thing that as practical men—and of that word "practical" I shall have something more to say by and by—that the head of a great department of the government, when a justice of the Supreme Court of the State of New York or a member of Congress comes to him on the question of the appointment of a laborer, is to treat that man as though he was worthy of no confidence? Is there any gentleman sitting around this circle that would approach any department of the government of the State of New York and expect to be treated in that manner? I am not saying it is

justified; I am not saying it is right, but I am simply calling your attention to it as an argument that the government at Washington cannot be held for every little dereliction throughout the country for their failure to perform work in an office; for their wrongful appointment; from the community itself, through its delegated spokesman, through its man of power and influence, asks for the appointment and asks for the thing to be done.

When we come down to the postmaster, Arthur R. Moore, what does he say? Why, he says: "I received the order from Washington. Is it for me to stand up against the postoffice department and say that I shan't have a laborer in my office at such salary as the department sees fit? I simply did what I was ordered to do. The order came to me to appoint Frank P. Ball; I responded to that order, as was my duty. My head would have dropped in the basket if I had not, and why do you criticize me? I did not ask it; I did not require it." For that he has sworn to, that never once did he ask for it.

Then we come to Frank P. Ball, come to his case. What does he say? He says that he was there ready to perform the services. "The government had appointed me. Was I to stand out as a censor of the government?" I submit this proposition to you that you may say that Frank P. Ball was not justified in receiving this money when he has performed no service; but that was not the position of the respondent in this case. Addressing himself precisely to the question which I am now considering, in his request to the Judiciary Committee of the Assembly, the gentleman who will follow me upon this question, and whose eloquence is relied upon to present the side of the respondent, uttered these sentiments, which precisely cover the case: "But certainly when he had left the service as he said he had; when he was in readiness to perform whatever he was required so to do; when he was at hand to do whatever the government required of him, fairly, justly, honestly, he is entitled to be paid."

There is the argument which is presented, that so far as Frank P. Ball was concerned, he was fairly, justly and honestly entitled to the \$2,500. Now, when we come back to the

case of the individual who set the whole machinery in motion, the case of Warren B. Hooker, what is the answer? Why, the answer is, and it was made to you fairly and plainly, without equivocation upon the stand yesterday, he says that "when I made a recommendation, the only duty devolving upon me was to see that the individual I named was an honest, a capable individual; it was not any of my business whether there were any duties to perform or whether there were not; it was none of my business to see whether the duties if there were any to be performed, were performed." And so you go clear around the circle and you find what is claimed to be an absolute defense, for each and every one, and you have the extraordinary presented to you of a crime committed and no criminal.

Now, I have endeavored to present to you fairly the precise situation and the precise argument in this case. Now let me go a step further—and as I said, it is always well to know where we stand in these cases; and the counsel having defined their position in one case, it is only fair and appropriate that I define my position; and when I say my position, I can only say that although I stand here as the representative of several of the Bar associations of this State, they necessarily are not responsible and cannot be for the positions I take, but I only take such positions as I believe are supported and approved by those associations, and I am liable to err, as of course all men are. Now, for what do we assail Warren B. Hooker? Because he has made a recommendation to office? Not by any means. There has been a great deal of talk in this case from first to last that Judge Hooker has been assailed because he has taken part in politics. I don't know who has made any such assault, and I care not. I shall distinctly and unequivocally say that if he has mingled in politics, so far as I am concerned, it is a mere question of good taste; it may or may not be good taste; I offer no opinion on that subject; I simply disavow that as any ground for his removal from the office of justice of the Supreme Court. Neither is it contended, gentlemen, by me, nor has it ever been contended that after an appointment to office has once been



squarely made and honestly made upon the recommendation of any individual, that that individual thereafter becomes in any way, form or manner or degree responsible for the conduct of the incumbent in the office.

The illustration has been used fairly that if I recommend a man to office and he afterwards commit a defalcation or embezzlement in that office, if I believed him to be an honest man when I made my recommendation, I am not responsible morally or legally or any other way that might be conceived of for his wrong doing, and I concede the proposition. We are not here asking any strained interpretation of anything. I say that Warren B. Hooker is to be judged concerning his acts as of the time when he committed those acts; he is to be judged as to what the fair intention was, what he expected and what he desired. And so you see at once that that takes out of the case upon the question or the innocence of Warren B. Hooker the question of the payment by Ball of the money he received from the government upon the note on which Mrs. Hooker was indorser as a cause of removal here. It also takes out of the case at once the question of the release of Mrs. Hooker from that note. Because, if Judge Hooker was guilty of anything, if there is anything for which he is to be criticised or condemned, he was to be criticised or condemned before the 30th day of December, 1899, just as much as he is now. What Ball did in paying the checks upon that note are simply evidenciary facts going to show the circumstances which existed at the time of his appointment, and they are not the facts of substance for which the condemnation is sought. I think perhaps I have made the distinction plain to your minds, and I will pass on to the next point.

Now, gentlemen, I shall address myself more particularly for a few moments directly to the Ball case, because the principles involved in the Ball case follow through all of the other cases and the analysis which I apply to the facts and circumstances of that case will apply equally well, with very brief comments, to the other cases. In the first place, Mr. Ball was appointed a laborer in the postoffice at Fredonia to perform these slight

and inconsequential services at a salary of \$600 a year. Judge Hooker says that he had nothing to do with the naming of the amount of salary, and he says also that he had nothing to do with the naming of the position. But you will find in the affidavit which was presented by Mr. Justice Hooker to the Bar association committee that Mr. Ball testified there squarely, and that affidavit was presented by Judge Hooker and fathered by him, that Judge Hooker told him he would have him appointed a laborer in the Fredonia postoffice.

Now, what was intended? For what purpose was that done? That is the question. Was it for an honorable purpose, was it for a purpose which would bear the light of day, or was it for a dishonorable purpose? You have got to inspect the position of the parties at the time and the circumstances surrounding them. You must remember that in considering this case, when it comes down to speaking directly upon motives, upon reasons, that we have to go into what might appropriately be called the camp of the enemy. We have to appeal to those persons who were concerned in the transaction, who will necessarily and inevitably say for themselves "we did what we thought to be right, we may have been mistaken, but we thought we were right." Now against their assertions in that respect, against the assertions of Judge Hooker, we have the right to put the surrounding circumstances; we have the right to use our judgment; we have the right to use our reason in this as in all other cases, and to your judgment and reason these remarks I am about to make are addressed.

In the first place, there has been some question in this case from time to time what the politics of Frank Ball were. Mr. Ball when he was upon the stand seemed to think he was a Republican. The appeal has been made here, a somewhat inflammatory appeal, if I may characterize it, regarding the rewarding of those who have borne the heat and burden of the day—some poor fellow who had helped you climb up to the lofty height, that he should share in the rewards. That applies to the helping up of a Democrat by a Democrat as well as to the helping

of a Republican by a Republican. But the politics of Ball and the question of political rewards was finally and completely solved by Judge Hooker on the stand yesterday when he emphatically stated that Frank P. Ball in 1898 was a Democrat. He makes no pretence that it was because of any party reason or any party reward, no matter whether that is a good reason or a bad reason; but the reason must be sought in something else. He says it was simply to assist Ball by a friendly act; no more relations with Ball so far as disclosed by this evidence than with forty or a hundred other young men of equal excellence in Fredonia; no social relations or business relations, but the mere fact that he was acquainted with him; that is the sole reason offered by Judge Hooker why he attempted to foist off upon the government of the United States this man Ball at \$600 a year to perform services worth only \$12, and why he succeeded in that attempt of his. On the other hand, there are other facts which we may properly consider. That is, that in the year 1896, Mr. Ball went into a business venture with Mrs. Hooker, the wife of Justice Hooker, and with others in which he invested at that time \$1,666, a sixth of \$10,000, being a one-sixth interest in that oil property. We find that whatever there was regarding that oil transaction and its subsequent history was perfectly well known to Justice Hooker. He admitted it upon the stand, makes no question about it, very fairly and frankly meets that situation.

We find the first note for \$1,666 was indorsed by Judge Hooker himself. We find that in the progress of the oil business there were losses met. That for those losses Mrs. Hooker was liable as well as Ball, because they were copartners in the enterprise; and Ball, in order to pay his proportion of the losses made two notes, and that both of those notes being made at the time stated—which of course are wholly immaterial at this moment, and I will not bother you with those details—we find that Ball made those notes and Mrs. Hooker indorsed them, until in September, 1898, the total indebtedness amounted to \$3,040, for which Mrs. Hooker was liable with Ball.

Now, by September, 1898, it had become perfectly certain that that indebtedness was not to be paid out of the oil property, because Ball tells you, and there is no dispute concerning that, that he then withdrew and surrendered his interest in the oil property, and as the principal debtor in the case must look to something else for the means to provide for the payment of those notes. That was perfectly well known to Judge Hooker and Mrs. Hooker. The notes were all consolidated and put into one note of \$3,040. Now it is said that Ball was perfectly responsible for those notes. That may be so. I am not going to go into any far-fetched inquiry about the responsibility of anybody. But we do have the situation existing here that Ball had his note outstanding for \$3,000; that Mrs. Hooker was liable upon it; and that Mrs. Hooker, as is evidenced by the transaction with the Fredonia National Bank only a year later, was in financial difficulties and was hard up at that time, and that it was of great importance to her to have that note paid or get her name off from it. And what is done? Why, at that very time, on that very occasion almost to the day, you may say, Mr. Justice Hooker—not judge at that time, however—makes application to the postoffice department at Washington for the appointment of Ball. He wanted to benefit Ball. He wanted him to receive some benefit from that. Did the question of his using those proceeds of the payment of that position to apply on the note come into the question? Why, most assuredly it did. It does not require any argument to establish that proposition, for the simple reason that Ball was a man of family. If he expected to rely upon what he got out of the postoffice for his support, he could not have looked to anything for the note. Did he expect him to perform any services? The most that he could have expected him to perform under the appointment of laborer was that he should perform those inconsequential services worth \$12 per year and receive the sum of \$600 for it. And if that, gentlemen, came up to the words which we have heard uttered from the place where I now stand, “A high standard of manliness,” if you think it does, your position and mine are so absolutely apart that it

would be utterly useless for me to address myself to that question any further. If it has come to the proposition that an American citizen, who is anxious for the welfare of his country, says that he can stand up and assist in looting the government revenue, that it is of no interest to him whether or not the appointment is needed that he seeks, that that is somebody else's business if he can succeed in foisting off on the government appointee after appointee for the simple purpose of enabling the man to derive a pecuniary benefit and the government to be defrauded, and he would shift that responsibility on to the government, then I say we are in such a bad way that things need changing very seriously.

What was expected? Was it expected that Ball should perform any services? Perhaps we haven't any direct evidence upon the point of what Justice Hooker expected in October, 1898, but we certainly have some evidence of what he expected in January, 1899, when he deliberately wrote to Beavers at Washington and asked to have Mr. Ball put into the classified service, and to be put into the classified service meant that he should be appointed a clerk. And the words are precisely equivalent to saying to Mr. Beavers "I wish to have Ball appointed a clerk in the postoffice at Fredonia." Within a week preceding that time Warren B. Hooker had already had four clerks appointed in that office upon his direct request, each and every one of them at a salary of \$600 per year, in addition to the clerks already in the office. Assuming that he knew nothing about Minerva Jeffrey, giving him the benefit of possible presumption—and to that, of course, I don't object at all—turning every inference for him whenever it can be done fairly—to that I do not object—but applying fearlessly and remorselessly to him, every inevitable inference, although it may bear hardly upon him, I say that the inevitable inference in this case is that Warren B. Hooker knew—he does not deny it—that in the office at Fredonia there were at that time four clerks performing services, adequate and sufficient to perform all the services of the office, that he had had four others appointed at \$600 each per year, making

eight clerks, and he then asked to have Frank Ball appointed a clerk.

Did he expect to have Frank Ball perform any service as a clerk, and, if so, what? What did Frank Ball expect? They were working together; they were talking together. The expectation of Frank Ball may be derived from the fact that he never reported for duty; it may also be considered from the fact that immediately upon the declaration of the Court of Appeals of the unconstitutionality of the Anti-scalping Law, so-called, in November, 1898, that immediately thereafter he resumed his ticket brokerage business which he had been carrying on in Dunkirk from the year 1891 or 1892 down to 1897, September 1, the time of the passage of the act, and openly advertised in the papers his business there, put out his sign, opened up his place and commenced work there. He didn't expect to perform any services. Now, if Frank Ball was that paragon of virtue, that honorable and upright man that he has been pictured to you upon the stand by Justice Hooker, I ask you where he got the expectation, how he understood when he had been appointed to an office in the postoffice at Fredonia under the government at a liberally remunerative salary, that he was not to appear for service and could go on and carry on other business just as he had done theretofore?

What did Arthur Moore, the postmaster, expect?

Now, Arthur Moore, had absolutely no interest in this case, and yet he had a conversation just about the time, he says, that Ball was appointed to the office; he had a conversation with Warren B. Hooker and Frank Ball had had a conversation with Warren B. Hooker, and out of those two conversations and the acts of the parties followed those conversations, and in my judgment were the necessary and inevitable results of those conversations.

Why was it that when Frank P. Ball was to be upon the roll of that office by the order of the government that he was not actually put upon the roll in the proper order and in accordance with the rules of the government, and his appointment

made public? Daniel P. Easton, one of the clerks in the office, tells you plainly, and it is uncontradicted,—if there had been any desire to contradict it, it could have been done, because he testified to that months ago before the judiciary committee, and if there was any mistake about it, Warren B. Hooker, Arthur R. Moore, Melvin Taylor or somebody else could have come forward and explained where the mistake was. The rules and regulations of the government require that in making up the payroll in the office the names of the clerks shall be put upon the payroll in alphabetical order, one after the other.

They require that the payroll shall be made up complete before it is signed by any of the clerks, and yet Easton tells us that never but once during the four years that Frank P. Ball was a clerk in that office did he ever see his payroll, and that was when there was a mistake made by Arthur Moore, the postmaster, in the amounts and a new roll was made up in Washington and sent back to be signed, and on that the name of Frank P. Ball did appear.

Can anybody offer any feasible explanation why the name of Frank P. Ball was treated in that manner, except that somebody understood that he was not to perform service, that he was not expected to perform service, and that the fact that he was upon the roll and not performing service was something to be concealed even from the clerks of the office, a disreputable performance, a scandalous performance, and I wish to say plainly and unequivocally, a criminal performance.

What did Melvin H. Taylor suppose? Melvin H. Taylor, the postmaster of the village of Fredonia, who was the appointee of Warren B. Hooker, the man he had selected, why when Melvin H. Taylor became postmaster, he did not expect that any services were to be performed because he did not call for any; he knew that there was something to be concealed because he repeated this same performance regarding Ball's name upon the roll.

How did Melvin H. Taylor get that information? How did he get the understanding that he was not to call upon Ball?

Why was it he was obliged to disobey the rule of the department? Push it a little further if you please, gentlemen, wherever you find a circumstance in this case it points inevitably and directly in one direction. From time to time the department required daily a report of the time of the employees in the office, that is how much time they spent there daily. The purpose of it we need not inquire into, it is utterly immaterial, but for some reason best known to itself the department wanted the information, and what did Melvin H. Taylor and Chauncey Sessions, his chief clerk, do? Why, in making up that report they made an absolutely false and perjured report—perjured if it was sworn to, false if it was not sworn to certainly—in which they put down at the head of the list, Frank P. Ball and reported him as coming there Monday morning at the hour of 6 o'clock and 47 minutes, and leaving at 11 o'clock and 32 minutes and returning after dinner at 1 o'clock and 31 minutes and going away at 4 o'clock and 26 minutes, and so on, for the six days of the week, absolutely reporting to the minute when he appeared forenoon, afternoon and evening, showing him to be a faithful employee there, attending to his business, and the whole thing was a deliberate, concocted manufactured lie. For what purpose was Melvin Taylor and his assistant Chauncey D. Sessions concocting such a lie as that? Was it to benefit themselves thereby, or was it to help them out? Why gentlemen, the theory of morals, the scheme of citizenship duty, of official duty, which has been promulgated from that witness chair by Mr. Justice Hooker, what does it lead to? It leads absolutely to the debauching of every man that comes in contact with it. It makes Arthur Moore a liar. It makes Melvin Taylor a liar. It makes Chauncey Sessions a liar. It makes Frank P. Ball a thief.

What did Frank P. Ball expect to do with that money? What did he want with it? Why, he was appointed laborer and the first two checks that he received amounted to the sum of \$82.30, for his services in the months of October and November, 1898. On the renewal on the \$3,000.00 on the 10th of December, he walks into the office of the Fredonia National Bank and you will find



by looking at the figures in this case that he pays just the sum of \$82.30 upon the note, no more and no less. He begins by devoting at the very time of the transaction the precise money which he receives to the payment of this indebtedness. Well, that might happen so in one case, I don't claim if that was all of it that would prove very much, but when we were before the Judiciary Committee of the Assembly I submitted to that committee a statement showing precisely the amount that was paid at the time of each renewal of the note, showing the amount that Ball had received and showing the way the check was applied, and that every dollar he had received was applied upon those notes, except the sum of about \$4.00, and the Judiciary Committee of the Assembly, I notice in its findings, adopted precisely the figures which I submitted to them after having an opportunity to compare that statement with the other one.

So that you see we have that Frank Ball did not expect to do any work, that he did not do any work, that he did expect to use that money to apply upon that indebtedness and that he did use the money to apply upon that indebtedness, and what is the legitimate conclusion from it? Why, I have heard the remark made that the release that was given to Mrs. Hooker in December, 1899, December 30th, casts a great light upon the intention of the parties in November and October, 1898, it has absolutely nothing to do with the case. A subsequent turn in the affairs of the parties shifted the situation but it could not shift the intent, it could not change the intent which existed at that time.

Let us go a little further. There came a time, to use words which we have heard here before, there came a time when the United States Government detected the situation, ascertained just what had been done, and a demand was made upon Arthur Moore and made upon Melvin H. Taylor for this money which had been paid to Ball by them respectively. Who was the first man who was approached by Melvin H. Taylor upon that proposition? Warren B. Hooker. What was said? Now, I ask you gentlemen in all fairness and in all candor before you vote upon this case, before you attempt to decide it, to take the evidence

which has been adduced before you here and sit down and read the evidence of Melvin H. Taylor through carefully. I ask your attention particularly to that part of it which relates to this conversation with Warren B. Hooker, that he, Taylor, was confronted with the demand of the Government. I ask you then, after you have done that, to turn to the evidence of Warren B. Hooker and read that over carefully and see what there is of it. And you will find that Taylor never once told Warren B. Hooker for what reason that money was demanded back. He was pressed upon that point, he was urged upon that point. He would simply say he went to him and said the Government was demanding back the money that had been paid Ball. He was asked if he told why the Government demanded that back, but he wouldn't tell that, he gave no reason to Judge Hooker. Judge Hooker expressed no surprise, he seemed to know what was going on, he seemed to know what it meant that the demand was made. Judge Hooker expressed no surprise whatsoever at the information that the money that had been paid Maurice Hooker was demanded back. He did not say why, why is it, why are they asking, nor did Taylor explain it was because no service has been rendered.

He don't ask that the money paid to him should be paid back for which no service was rendered, he simply says according to Taylor, do as you see fit about it. Here is the place, gentlemen, and I may pause in my argument to remark, according to the theory which was advanced by Justice Hooker yesterday, it was fair and honest all around that he should recommend what was somewhat irregular that his nephew should receive pay for work that he did not perform, but he never once stood up and did not dare to stand up and say that money would have to be returned to the Government. He did not have very much confidence in his ethical theories at that time at least. Now, passing, for I must move on rapidly, of course, from the case of Frank P. Ball to the case of Thomas O'Neil; what do we find there? We find that Thomas O'Neil, a man who was concededly at the time of this transaction in the employ of Justice Hooker, was on the

12th day of January appointed a clerk in the postoffice at Fredonia, with no duties, nothing whatever to do, and he was retained as a clerk upon the pay-roll, performing no services whatsoever, until the first of April, 1899, when he was made carrier and performed duties. Time and time again that case has been pressed upon the counsel for the respondent and the only excuse which I have heard in regard to that is that in consequence of the necessity of free delivery at Fredonia, it was necessary to have men on hand who could perform the duties, that is the answer; can you conceive of anything any more perfectly inadequate, such a suggestion as that. I ask you gentlemen, why if there was any difficulty thereafter in getting Fairbanks and Lamphere the other appointments made carriers having them on hand, conceive the sum of hundred and twenty-six dollars for no services rendered in order that the government might be perfectly sure to have somebody there. We find the civil service examination was held as provided by law on the 8th of March, and over thirty of the young men of the village of Fredonia, who had a right to expect fair, equal and just treatment at the hands of the commission, and Warren B. Hooker, appeared and were examined for carriers a large number passed examination, and they were already to go to work on the first of April.

Why has it been necessary in that case to lie and cheat, and when before the Bar Association and committee and before the judiciary committee, Arthur Moore attempted to represent that some services were performed before the first day of April, that something was done by this man O'Neil before that time, but upon inquiry, it was established beyond any controversy that any services performed by this man O'Neil, which were performed before he became a carrier, were performed after the first of April, and while he was a carrier, and those services were simply getting the names of the people around town who wanted their mail delivered, and setting up some mail boxes, and the boxes did not appear in the village of Fredonia until the twelfth day of April.

We next come to the case of Ora Caldwell; we have been over again and again, the whole life of this man has been spread before you plainly. After he sought investigation and was before the Bar Association committee and I was endeavoring to go into this Caldwell matter, I was personally accused for counsel for Judge Hooker for having been guilty of subornation of perjury in attempting to show that Caldwell was at work in Dunkirk, but when Caldwell was on the stand he had to swear to it. When we were before the Judiciary Committee and attempted to prove the appointment of Caldwell by Judge Hooker, you will find by looking at the record the counsel asked to discontinue the further consideration of the Caldwell case. We had not proved that Justice Hooker was responsible for the appointment, but when he was on the stand, he said Caldwell was appointed through his procurement.

Now, Ora Caldwell was appointed for that office on the request of Warren B. Hooker on the twelfth of January, 1899, and he tells us that the first he even knew of the appointment was when Arthur Moore came to his house in the village of Fredonia and handed him a check, I think that was for a hundred and fifty dollars, or very nearly, it was a hundred and twenty-five dollars, about one hundred and twenty-five dollars, and he says that was the first he knew he was appointed. That is the way of much of the affairs of the government under the system recommended by Justice Hooker, then suddenly the postmaster of the town should turn up at the house of some individual and hand him a check for a hundred and twenty-five dollars, and say the government hands that to you for what? Because Justice Hooker asked that you be put on the roll and receive this money. That is what he asked, and that is just what happened. Nothing more or less than this. Justice Hooker asked of the authority of Washington and after further consideration he says; after talk with the Department, knowing what he was about, he urging that upon Mr. Proctor, urging that upon Beavers according to his own testimony, he procured the handing out to Ora Caldwell the sum of two hundred and fifty dollars, or the funds of the government

money, for absolutely no services whatsoever; and he said in his answer in this action, and this is a test of his view of the materialities of the matter, that everything that he did in the premises, was done in a faithful, honest and conscientious discharge of his duty, both as a citizen and public officer? He says in his answer, to the Bar Association Committee, that he is not conscious of having made a single improper recommendation to the postoffice department; he says it was not improper to have four clerks appointed at six hundred dollars each, in one day in addition to the force of clerks in the office. He says that it was not improper to recommend and ask that Katherine Clark be appointed in the postoffice in Fort Plain, and the scale of ethics, the rule by which he seeks to be judged in this case, the rule by which he asks you to acquit him is, that it was entirely proper and conscientious in the discharge of duty by him, a justice of the Supreme Court to ask that clerks be appointed in an office for which there is no necessity whatsoever.

In addition to that in the Katherine Clark case, it is proved beyond any sort of controversy, I think, at least it is not denied, that he procured her appointment to the Fort Plain office, in addition to those clerks now in the office. In April, 1899, he wrote Beavers and asked to have a check sent to Katherine Clark at Fredonia. I am going to ask the privilege of reading that letter to you. It has been read several times I think, but ought to be read several times more.

• FREDONIA, N. Y., April 12, 1900.

Personal.

MR. GEORGE W. BEAVERS, *Postoffice Department, Washington, D. C.:*

My dear Beavers.—I notice by the press that you have returned and I sincerely hope that you had a pleasant and restful vacation.

Now that you are on the ground again I beg to call your attention to two or three matters. In your letter which you sent me of February 3d, you indicated that there was no probability of any change in the rural deliveries at Hamlet, Chautauqua county, and Perrysburg, Cattaraugus county, New York. I am very anxious that they remain as they have been established.

I also beg to call your attention to the matter of Miss Katherine K. Clark to a clerkship at Fort Plain, N. Y., in Congressman Sherman's district. What I wish to have done is, for the postmaster of that place to send her a check, or send it to you, and you can send it to her, and then you transfer her to Fredonia. We will appreciate this very much if you can take it up and have it done very soon.

Thanking you in advance, I am,

Very sincerely yours,

(Signed) W. B. HOOKER.

Now, gentlemen, I ask you in all seriousness, and in all candor, to consider the moral condition of the person who wrote that letter, whether it evinces moral peripetude or a conscientious discharge of duty? Let us have the issue drawn thoroughly and squarely. I say that it evinces a disposition to defraud the government. I say that it was solicitation to a high officer of the government to commit a felony; I say that if that request had been complied with by George W. Beavers, that the putting of the request and the compliance and the payment of the money together would have made a conspiracy to defraud the government. Because a conspiracy is nothing under heaven but doing a thing by common agreement. Some of you who are not lawyers may assume that a conspiracy is some kind of a dark lantern affair, that you must get into a room and sign a compact with blood and death heads and that sort of thing, and sign an agreement that you are going to commit a crime. Nothing of the kind. All that is necessary to constitute a conspiracy to defraud the government is to agree or have a common understanding to do the thing which constitutes a fraud. That is all there is of it. I say that it was a corrupt act.

MR. RAINES: Read the letter again.

MR. STEVENS: Of course, only that portion of it, "I also beg to call your attention to the appointment of Miss Katherine K. Clark to a clerkship at Fort Plain, New York, in Congressman Sherman's district. What I wish to have done is for the postmaster at that place to send her a check or send it to you, and

you can send it to her and then you transfer her to Fredonia. We will appreciate this very much if you can take it up and have it done very soon."

MR. MORELAND: Won't you read the letter which he wrote asking for the appointment at Fort Plain?

MR. STEVENS:

"FREDONIA, N. Y., *December 9, 1899.*

"My dear Beavers.—I wish to thank you for your kind letter concerning the clerkship. I have written Mr. Sherman telling him I knew you would be willing to make the appointment at Fort Plain additional to those necessary in the office, and then transfer her to Fredonia. I hope that this can be done."

So we have, first, a justice of the Supreme Court asking for the appointment of a person, for which he knows and deliberately states there are no duties "additional to those necessary in the office." And then after the lapse of three months he writes and asks to have that person paid when she hasn't been within hundreds of miles of the office and has performed no services whatsoever.

I have pointed out that if that request should have succeeded, the government would have been defrauded, that the act would have constituted an indictable offense. I point out now, that the request was an attempt to defraud the government. I point out in addition to that, that it was corrupt under the law of this State.

You need not depend upon my interpretation of what constitutes corruption. This Legislature, or the Legislature, rather, to speak with more technical accuracy—the Legislature of the State of New York has defined what constitutes corruption, and section 718 of the Penal Code of this State says, "Each of the terms 'corrupt' and 'corruptly' imports a wrongful desire to acquire or cause some pecuniary advantage to, or by the person guilty of the act or omission referred to, or some other person."

Now, there is no question but what in writing this letter Warren B. Hooker desired to cause some pecuniary advantage to Katherine Clark and all that was needed to make it corrupt was

that it should be a wrongful desire, and I submit that it is beyond all controversy that it was a wrongful desire to ask her to be paid for no services whatsoever which she had rendered in Fort Plain and when she had left Fredonia, because it is undisputed in the case that she never went to Fort Plain, and that when Warren B. Hooker wrote that letter he knew it. Why, he says that he thought she had some right to it, she thought so, and that it wasn't for him to say. That is the answer he made upon the stand yesterday. He says it is not for me to say whether she should be paid or not. That is the lofty moral plane upon which controversies are to be settled by the Chancellor of this State. He says that he can prefer any immoral, any criminal request that he sees fit to any officer of the government, and that he is blameless provided the officer of the government does not yield to it. He says that that evinces a high standard of manliness; he says that in doing that he was in the conscientious discharge of his duty, a gentleman who seeks to sit in the forum of conscience and apply conscience to the cases which must necessarily come before him.

And so, gentlemen, I am simply seeking here to draw the line, I am simply seeking here to point out upon one side you have one set of principles and upon the other side you have the other set of principles.

Now, we take the case of Maurice Hooker for a moment. There isn't any question about the facts, not a word in dispute anywhere, except as each witness has contradicted himself. Maurice Hooker was unacquainted, according to his own testimony before the Bar Association committee, which has been read here, with Melvin Taylor, and the first time that he saw him,—unless he may have seen him casually as a small boy years before—he saw him in his uncle's office in the post-office building at Fredonia, and he says that that was the first that he heard of any talk of the appointment, and he was told then and there that he was to have an appointment. Warren B. Hooker says that he went to Melvin H. Taylor with regard to getting some work for his nephew, and he says that



Melvin Taylor told him that he wanted some boy to do the work around the office and keep it up in nice tidy shape. Well, if Melvin Taylor said that, of course, he was doing as he has done in dozens of other places through this case, he was simply lying, because he didn't want any boy, because he never asked Maurice Hooker after he got him appointed to take any position there in the office. On the contrary, he continued the situation as it had been before, showing there was no want of the kind, and it was deliberately arranged between Melvin Taylor and Warren B. Hooker that they should procure the appointment of Maurice Hooker to that office at \$400 a year if they could get it done to perform services which if performed were worth \$12 per year.

Now, gentlemen, I want to make further concessions in order to draw the issue down here just as finely as we can, and make them just as plain as we can. I don't care anything—I have asserted it before repeatedly—whether Maurice Hooker performed those services, or whether he didn't. I say in the moral aspect of the case, it is precisely the same now as it would have been if Maurice Hooker had gone there and done that cleaning. I simply say that the wrong that was done, if any was done in this case, was that Maurice Hooker was to be paid \$400 per year for nominal services worth \$12 per year. I say distinctly, and invoke your judgment upon it, that an attempt to do that was an attempt to loot the treasury of the United States; I say further, that it was worse than looting; I say that there was a responsibility devolving upon Warren B. Hooker as the person to whom, under the laws of the country and the customs of the country, the charge had been given to care for the postoffice at Fredonia, to see that it was properly conducted; that proper appointments were made there. I say, and that has been my position from first to last, that he had a duty to perform in respect to that office; he had the duty to see that it was properly administered; as the appointing power, to which your attention has been called by his counsel and by himself, he had a duty to discharge to the government, to the

people, regarding that office. And how did he discharge it? He betrayed his trust by seeking to gain private advantage for his nephew; by seeking to have a tremendously exorbitant price paid for a tremendously small service. I say if such things are tolerated that no government can stand; I say if you apply that principle that the whole fabric of the government would fall because it can only stand upon the universal integrity of the people, and I say, if you approve that sort of thing, you are approving something which is absolutely inconsistent with the spirit of American institutions.

We have heard a great deal here about the spirit of the Constitution, and that this thing and that thing must not be done because of some danger which is to follow; that somebody is going to do wrong in the future; but here we have a practical case which comes right down to you. Here is a set of moral principles. Upon the one side a man of high position, of great power and authority, charged with a duty, and hence with a responsibility in the matter, who is to be permitted to loot the government of its revenues or who is not to be permitted. You are to place your seal of sanction upon the one theory or the other here. I have tried to present my side of it so plain that it could not be mistaken by any man; I have tried to present to you, that people must be held up to their trusts. You know perfectly well that in this Legislature there is a great cry that certain great corporations should be investigated. Why? Because the people in a position of trust have violated their trust, or are alleged to have violated their trust. You say it is destructive to society; destructive to business; destructive to everything that it comes in contact with, that men who have violated their trust should be continued in the places they are in and that they should be put out; I say to you, here is a man that has been put by the people of my community, of my congressional district, in a position of great trust and power; he has been trusted as no other man within a generation has been trusted; we have given to him these powers to exercise in our behalf and for our benefit and for the good of our community

and for the good of the state, and for the good of the country, and now he comes squarely before you and says, notwithstanding all this, "I had no duty to perform; I was at liberty to let the government take care of it; the responsibility was on Beavers, he was the man; it was the responsibility of Warren B. Hooker, this boy, not me." He repudiates the trust, and he comes before you, and he comes before the Bar Association committee and says: "I am not conscious of having made a single improper recommendation to the postoffice department in all these recommendations." He comes before you and says not only in his answer, but he says by his evidence: "I did nothing but what was right." And that is the issue before you to-day and that is the issue before the people of the State of New York.

The great question in this case is which of these two theories of government, of right and responsibility are you admitting, the one urged by Warren B. Hooker and his counsel?—the one which has been adopted by him and practiced by him, and which if you approve, not only he but every other man, will have the liberty to follow; or are you to take the one which I advised? I have not had the time to argue it at great length; I have only had the opportunity to submit it to you and show what it is, and if you want a practical experience, let me call your attention to the case of Maurice Hooker again. We find here that Maurice Hooker, a boy of sixteen or seventeen years of age, was introduced into the life by a justice of the Supreme Court, his uncle, and deliberately told that it was right, that it was proper for him to take \$400 per year for doing the slight duties which were worth \$12 per year. He said to this boy, his own nephew, flesh of his flesh and blood of his blood, that it was the right and proper thing to do, but there was no moral turpitude about it—

MR. ROGERS: Will you cite me to the page of the evidence where that occurs? ●

MR. STEVENS: My dear sir, no witness has sworn to it, but he requested the appointment of Maurice B. Hooker to be a laborer at \$400 a year to perform duties that, as I have said

before, I do not believe that any human being would doubt but that Warren B. Hooker knew just exactly what those duties were.

MR. ROGERS: Will you tell me what the page of the report is where that appears?

MR. STEVENS: What?

MR. ROGERS: The statement.

MR. STEVENS: That I make?

MR. ROGERS: Yes.

MR. STEVENS: Why, my dear sir, no witness has sworn to it, he requested the appointment of Maurice B. Hooker; he knew the postoffice——

MR. ROGERS: Pardon me. You made the statement that Justice Hooker said that.

MR. STEVENS: I said—— if I said that I want to withdraw it, Mr. Rogers.

MR. ROGERS: Yes.

MR. STEVENS: In the haste of my speaking I may possibly—— I say that in proper—not so far as his deliberately saying that to him—of course he didn't say it; so far as his saying it to him by actions, by inducing, by permitting him to take that money, by putting him in position, he said it stronger than any words could have said it.

Now, I wish to place no forces, no strained construction upon anything. I say deliberately that I would prefer it the other way; but I can see no mistake in this case, so far as these Fredonia postoffice matters are concerned, from the proposition in establishing the causes for which a justice of the Supreme Court may be removed upon the one hand or for which he may be retained in office although guilty of it on the other; you have two opposing principles here. You put your seal of condemnation upon the one and approval upon by the other by the vote which you make. It is of far more importance, it is of greater

interest to the people of the state where you put your approval and where you put your condemnation than any removal from office or remaining in office. It is important of course, it is immensely important to Justice Hooker, and his interests; his rights I do not ask you to disregard, to diminish in any respect. But I do ask you to regard this: that it is of immensely more importance to the people of this State what the Legislature of the State says is right and what is wrong in various public affairs.

I have pointed out to you in such feeble words as I could command and in such words as the time has allowed that in my judgment the method of dealing with public affairs which has been adopted by Warren B. Hooker and which he stands for and approves and says is right is one which is destructive of all government, which is immoral in high degree, which is corrupt, which is criminal in its nature. And on the other hand which he says is not corrupt, he says that it is not criminal. There is no dispute about the fact. There cannot be in this case. Upon the things which he himself has said, the things which he himself has done upon the stand he raises the issue. And I sat here yesterday, enjoying yesterday as I never enjoyed a day before, barring the physical circumstances, because a controversy in which I have been engaged for a long time and in which I was deeply interested, finally after great effort the line was drawn, the issue was sharply cut, and cut by the witness upon the stand.

Gentlemen, I thank you for your attention. I feel highly honored that I have been permitted to address you upon this occasion, and if what few poor words I have been permitted to utter, if anything I have said should make for a higher and better and purer public life, which will lead to a greater stability in public affairs, and fewer scandals, and which will tend to stop corruption, why I am only too glad that I have been enabled to do something of the work in that regard.

MR. ELSBERG: May I ask you a question, rather on the legal proposition than on the facts. You said that in a conspiracy

there need be no dark chamber proceedings. But in allegations—to sustain allegations——

(Cries of louder Senator).

MR. ELSBERG (continuing): To sustain that allegation of a connivance between Beavers and Justice Hooker must not——

THE PRESIDENT: I would say to the Senator from the Fifteenth that it is impossible for any one to hear what the Senator is saying.

MR. ELSBERG: I will try to raise my voice, Mr. President. In order to sustain an allegation that there was a conspiracy that Beavers and Judge Hooker connived together to defraud the government, isn't it an essential thing to prove knowledge on Judge Hooker's side of exactly the result that was going to follow from the recommendations that he made. In other words must not the knowledge or the intent be absolutely fixed upon him as an equivalent element of proof. I ask that as a preliminary to another question I am about to ask.

MR. STEVENS: I don't know, Senator, as I exactly apprehend the full bearings of your question. So far as I do I will endeavor to answer. The subject of conspiracy and what must be proved in a case came in controversy before the Judiciary Committee upon its investigation of this matter and there seemed to be a difference regarding the law. When I addressed the committee upon that occasion I went somewhat extensively into the law of conspiracy by a somewhat careful and elaborate citation of authorities. You will find that in the report of my remarks. And in that you will find my position upon the question of what it is necessary to do in order to establish a conspiracy stated in the language of courts which have passed upon it. And I think you will agree with me that it is better at this time that I should refer you to precisely those cases. You can very easily find them upon reference to this report here (indicating report of Judiciary Committee). And you will find it stated by the courts and in the precise places where it could be found and the precise

language of the courts, rather than for me after an exhausting address to attempt to state the precise legal proposition in precise legal language. Now, is that a fair answer?

MR. ELSBERG: I think so.

MR. STEVENS: If it is not I want to say——

MR. ELSBERG: I appreciate the strain under which you have labored and the exhaustion which must necessarily come from it. What I am trying to get fixed firmly in my mind is this: (Cries of louder). Whether you suggest, or whether it is contended by the counsel for the prosecution, if we may use that term, or that we are entitled, or that it is our duty and you ask us to draw from the testimony or from the circumstances of the case as you group them, to impute for the respondent here a knowledge and intent which the affirmative testimony does not show and which if we are to impute it to him we must disregard the affirmative sworn testimony in the case.

MR. STEVENS: Well, now, I think I appreciate your position in that, Senator.

MR. ELSBERG: I ask it as a question, that is to get your idea.

MR. STEVENS: Yes, and if the President of the Assembly gives—my time is not quite—I will try to meet that. It would have given me, gentlemen, great pleasure, as I stated before, to have addressed you upon some legal questions here of great weight and importance. But upon this precise proposition as to the intent of Justice Hooker, the questions which Senator Elsberg asks if I understand him correctly is this: or rather is based upon this state of facts, that there is no direct proof as to the intent of Justice Hooker in procuring we will say the appointment of Ball, and on the other hand there is direct proof by Judge Hooker himself, saying that his intent was honorable and upright. Does that meet the proposition?

MR. ELSBERG: Yes. Judge Hooker and the testimony of Ball, so far as I have been able to inform myself upon this question.

MR. STEVENS: The sworn testimony on that question is directly to negative any knowledge or intent on Judge Hooker's part. If the sworn testimony upon that proposition is directed to negative that intent, then of course it would be necessary for you to say there was no such intent. It is my contention, however, that all of the sworn testimony on the part of Justice Hooker, on the part of Ball and everybody else shows when properly judged the existence of the intent beyond any possible controversy. That we would judge, we must judge this just as we judge in any criminal case. We must use our reason as to what the parties did as disclosing the intent at the time and not what they say about their intent. Any man when he is charged with having a wrong intent can and presumably will go upon the stand and say that he had a right intent. Now we gather intent in criminal cases, in civil cases and in every place and form our judgment of what the intent was from what the parties all did. They put it together.

Now, if I may be pardoned Mr. Elsberg right here—if you will refer to the speeches of Abraham Lincoln in his controversy with Douglas, you will find one of the most beautiful illustrations and one of the most forcible illustrations that can possibly be made, in which he was referring to the Kansas-Nebraska controversy and in which he said, “When you find James and Rogers and Steven and Franklin, one of them making one beam and another another beam and another preparing some part of a house and when you come to bring the beams and assemble them together and the clapboards and the shingle and the light—” I am not using his language but the idea as it occurs to me—“and when you find that they make a house, the irresistible influence is that they all intended to make a house.” And I respectfully refer you to that illustration, being in the most concise language possible to illustrate how you are to prove anything. Abraham Lincoln at that time was arguing to prove the intent of two presidents of the United States, a chief justice of the Supreme Court of the United States, and a United States Senator, and he estab-



lished this to show that when the thing comes out and produces a certain result and must produce that result, that that is evidence of the fact and shows what the intent was.

MR. COGGESHALL: I ask unanimous consent to ask a question, Mr. Stevens.

THE PRESIDENT: The time occupied now by Mr. Stevens will be taken from the time that Mr. Coman has.

MR. COGGESHALL: I would simply ask if he desires us to treat this case in the consideration of the evidence as we would in determining a criminal action where a crime has been committed and therefore we must find that the respondent is guilty beyond a reasonable doubt.

MR. STEVENS: I do not like to take Mr. Coman's time and I think that I cannot refuse to answer the question of the gentleman without discourtesy perhaps.

I assume that it is not a question of reasonable doubt or anything like it in this case, Mr. Senator. It is a question whether each member of this joint assembly is satisfied in his conscience and in his heart that Mr. Justice Hooker has been doing these things which have been a moral unfitness to be a justice of the Supreme Court. If he is satisfied of that fact, I assume he should vote for removal. If he is satisfied on the other hand that he has been doing those things which are not fit for removal, which are right, then he will vote to keep him in office. Does that answer the question fairly?

THE PRESIDENT: Mr. Carr, you may proceed until 1:05 when we will take a recess.

MR. CARR: Mr. President, may I inquire what time the joint assembly will adjourn to-day?

THE PRESIDENT: At the conclusion of the argument.

MR. CARR: No, I mean for the recess.

THE PRESIDENT: We will adjourn for the recess at five minutes past one in order that you may have an hour and a half before recess.

MR. CARR: I understood the order yesterday was that we adjourn at half-past twelve. That is the reason I make the inquiry.

THE PRESIDENT: I think the correction is right. The Chair recalls now that we did intend to adjourn at 12:30. We will continue to 12:35.

MR. CARR: I beg pardon for calling attention to it, but I simply wanted to know where I am.

CLOSING ADDRESS by MR. CARR:

MR. CARR: Mr. President and gentlemen of the joint assembly: That a grave and weighty matter is here depending does not admit of doubt. The possible effects so far as the personal fate and fortunes of the justice who is here accused may be of such character and the effects so far as our ideas of the constitutional scheme of government may be so momentous, that I may with justice and propriety crave the indulgence of this assembly for a brief space of time in which I may present the views that we entertain and ask your undivided and patient attention to such reasons as I may have to advance for the beliefs that we entertain.

It is proper for me to say at the outset that I come to the discussion of this case with not a little of doubt and hesitation; doubt as to my ability to properly present it, hesitation as to the true line of reasoning that ought to be adopted for the purpose of convincing the minds of those who are here to take part in the determination of this case.

Whatever may have taken place heretofore, we are here now with clear and well defined issues. Down to the time that this resolution was adopted, the warfare, so far as this accused justice was concerned, was of the Indian character. Danger was behind every tree; it was in every leafy covert. We could not see and recognize the hand that fired the shot, or aimed the blow; it was an open field and the investigation was as to anything that may have been done by him during the entire period of his life indicating that he was unfit to be a justice

of the Supreme Court. But that stage has passed. We are here now and are dealing with the matter under the rules of civilized warfare, where methods and rules that have been adopted for that purpose are to be recognized and applied. Charges have been made; out of the evidence taken by the Assembly Judiciary committee, certain things have been sifted; and upon them you have issued your mandate for Warren B. Hooker to appear at your bar and show cause why he should not be removed. Why? For these specifications that are contained in the mandate that you have issued.

Let me read the beginning of it so that we may understand at the outset just the matter we are dealing with here, and that we may not stray into some forbidden field and undertake to justify some adverse action by a view not justified by this order:

“That the said Warren B. Hooker, while a representative in Congress, prior to the 10th of November, 1898, and while a justice of the Supreme Court of the State of New York since the said 10th day of November, 1898, has been wilfully guilty of corrupt, unlawful and immoral acts which have tended to bring, and have brought, the said office of justice of Supreme Court and the administration of justice into contempt, and which show a personal unfitness on the part of the said Warren B. Hooker to hold and occupy the office of justice of the Supreme Court, which acts and conduct are set forth and described in the following allegations and specifications.”

That was the indictment that was framed. Up to the time that was presented, we knew not who were the accusers. Now, we know that the Legislature is the accuser—and I use that term in no offensive sense—but here in the discharge of the duty that you owe to the people of the State, you have asked him to show cause at your bar why he should not be removed from the office he holds, because he has been guilty of the things that are specified in the document attached to what I have already read. We are not to go outside of it. We are not to talk about some high moral duty that may exist. We

are not to consider whether it is deemed entirely fit and appropriate for a justice of the Supreme Court to recommend some person for office. We are to deal with his acts and conduct as revealed in these specifications, and with them alone. And the members of this assembly, when they come to vote, are to say whether he has been or has not been guilty of the things that are contained within the document to which I refer.

Now, let us see what they are. Not in all of the details that are there, because they are long, they contain many words, they have much of detail about them; but they can all be summed up in almost a single sentence as to each one, and it presents the entire question that you are to determine upon whatever evidence has been presented here.

We will take the first one, that by connivance and agreement with George W. Beavers while a representative in Congress and a justice of the Supreme Court, he procured the appointment of Frank P. Ball as laborer and clerk in the Fredonia postoffice, with intent thereby to defraud the government of the United States. When you read it all over, when you sift out all the immaterial things, when you get to the end you will discover that that is the charge that is contained in the specification.

Second, that by connivance and agreement with George W. Beavers and Melvin H. Taylor, he procured the appointment of Maurice Hooker as a laborer in the Fredonia postoffice with intent to defraud the government of the United States.

Third, that by connivance and agreement with George W. Beavers he procured the appointment of Ora Caldwell, Thomas O'Neil, George Cooper and Henry J. Pemberton as clerks in the Fredonia postoffice with intent to evade the Civil Service Laws of the United States and to defraud the government of the United States. I assume that to be out of the salary that was paid O'Neil and Caldwell prior to the time when that office became one in the classified service.

Fourth, that by connivance and agreement with Beavers and with Taylor he procured the appointment of Katherine Clark

to a clerkship in the Fort Plain postoffice with intent thereby to evade the Civil Service Laws of the United States and to defraud the government out of the salary that was asked to be paid during the time that she was upon the rolls of the office.

Fifth, that by connivance and agreement between himself and Lester F. Stearns they procured from a justice of the Supreme Court a judgment to which they were not entitled which might prejudice the interests of the city of Dunkirk.

When I have stated that I think I have stated all that is needful to be stated with regard to the charges presented, and we are to deal with them and with them alone.

It has already been said on our behalf, has not been contradicted by anyone, that those are charges of the commission of criminal offenses. Now let us see who is the man that is at this bar answering to your mandate. He has been for six years and more a justice of the Supreme Court. From November 10, 1898, until December 31, 1899, a justice by appointment. From January, 1900, down to the present time a justice of that court by the election of the people in the district in which he lives. Has anyone suggested or do you find in these papers anything which indicates that during that period of time he has failed in the slightest degree to perform with the utmost efficiency, the utmost of fidelity, the utmost ability the duties of the office to which he was appointed and to which he was elected? Apparently not. Nothing in these papers indicates that. And yet I need not say to the members of this joint assembly who are lawyers, that a man who sits on the bench during a period of six years, who hears the cases that are presented to him by them, opens wide the door of criticism and complaint. Suitors do not at all times obtain the judgment or the relief to which they thought they were entitled. Lawyers sometimes think they were not fairly treated by the judge before whom they appeared, and when they go out, whether it be to the tavern or elsewhere, they speak in the acrid tones that comes from a defeat that they thought was an unjust and unrighteous one in their case. Opportunity has been afforded to gather up all this criticism throughout the entire

State. The Bar associations have been represented, Jamestown for one, and that has been active and vigorous as you have seen by the argument made by the gentleman representing that association who has just preceded me. The Bar Association of the city of New York has been here. The Bar Association of the city of Brooklyn. And they have had ample opportunity to gather anything, if there was anything that would affect in the slightest degree the performance of the duties by this man who stands here accused. The nets of suspicion have been cast into the waves that lap the shores of his judicial life, and when they have been drawn not even a minnow has been the reward of the effort. Chasers have been sent out in the eager hunt to find something that might be presented to this Legislature which would reflect discredit upon him in the discharge of the duties of his official place, but they have returned at the close of the day, returned at the time when the curtain has fallen on the taking of testimony here, as lean of results as when they started out in obedience to the huntsman's horn. The sleuth-hounds of malice have been unleashed and put hot upon his trail, and those who have been eager to have something presented have waited in vain until the joyful cry should indicate they had found some beast for which they were in search in his lair, and yet nothing has been presented.

When he entered upon the office, he pledged himself to the people of the State that he would faithfully discharge its duties. That pledge has been redeemed to the fullest extent and in largest measure. I so say because no one comes here and states otherwise. And not only that. We thought it was meet and proper for the members of this Joint Assembly to have some understanding to know how the men with whom he has been associated in the discharge of his judicial duties think of him in that regard, and so the members of the Appellate Division in the Second department where he has been engaged for two years or more, were brought here. Not because any question was made with regard to his judicial life, but that you might see from the

men themselves, from the testimony they gave, what foundation there was, if any at all, for the charge contained in this resolution that he is unfit to be a justice of the Supreme Court.

I speak of these men from personal knowledge I couldn't speak too highly, because of my kindly and friendly relations with them during many years of life. I know them to be men absolutely above reproach and suspicion, men who would not hesitate in the slightest degree if they had found anything in their connection or association with Judge Hooker which indicated there was a moral unfitness about him, to say it in your presence, because they would not wish to have among them as one of their number, a man who had shown to their discerning eyes any flaw or seam in the moral armor with which he was clothed.

Michael H. Hirschberg, the presiding justice of the Appellate Division in the Second Department, I have known almost since I commenced the practice of the law. He and I were in Orange county; he came into the profession a little later than I did, but he and I have been together, sometimes antagonists and sometimes on the same side, and during those years a friendship has grown up between him and myself that never has been dimmed by the slightest cloud, and the kindly relations between us have never been affected by the slightest unkindly word. I know him to be a keen, clear and discerning man, and if during the period that Judge Hooker has been there under his supervision he had discovered ought that indicated he was not a fit and proper man to occupy the place of a judge of the Supreme Court he would not have hesitated to have said so when he was brought hither as a witness.

Willard Bartlett is to my mind the type of the very highest sensitiveness as to the honor of the bench. I have known him for 21 years while he was there and I am absolutely certain, and any man in this body who knows him as I do would say that if during the period of time he had been associated with Judge Hooker, he had discovered the slightest thing which indicated he was not entirely fit and proper to sit upon the Supreme Court

bench, he would have had the courage and the manliness to have said so when he occupied the witness chair.

It is of some value for this reason: Suggestion is made why not bring the justices from the western part of the State? They never observed his performance of judicial duties. Whatever knowledge they had with regard to it was as it came to them by common report. But the Appellate Division is a different thing. Five men are together as the same family, they hear the cases, they discuss them in the consultation room, they become perfectly conversant with not only the views, but with the frame and temper of mind of each member of that body, and if at any time, or under any circumstances, it had appeared to a single member of that court there was a man who had been sent there by the designation of the Governor who had some moral infirmity, showed that he was not conscious of the obligations that man owes to man, they never would have appeared at your bar and given him the certificate that they did. That is why we brought them here, in order that you might see the men themselves, in order that you might comprehend from those who were his associates, those who knew him best, whether he was or was not a fit and proper man to occupy this place.

You may say they are members of the judiciary and so eager and anxious to aid one of their brethren. Whoever makes that remark does it without knowledge of the largeness of heart, of the clearness of mind and of the purity of thought of the men who make up the judiciary of the state. If it seemed to me from my association with them that a single man would come here and assert by his presence or by his evidence that a man with whom he had been associated was fit and proper to be there, when it was not so, then whatever I have learned of the judiciary during nearly forty years of practice, has been learned in vain.

It was for another reason, and that is that the charge and claim is made that the testimony given by Judge Hooker here is not to be believed by you because of the interest he has in the result of this great case. We have the right to furnish the



evidence of those who have been associated with him and to see whether at any time under any circumstances, during the year that he was there and in the multitude of cases that were considered and determined by them, he indicated anything to show that he was not up to the highest and the purest standard of a justice of the Supreme Court. And so that evidence is here. So we have the fact that no one has made the claim or charge. We are to deal not with any dereliction in judicial duty, not because he has failed in the slightest degree during the six years that he has been on the bench, but because other things have occurred with which he was connected that it is said show an unfitness to hold the place. I have called your attention to what they were. They are charges of the commission of criminal offenses by him. Nothing else. You are to find whether he has been guilty of the commission of those criminal offenses. If so, whether the power is lodged in this assembly for that reason to remove him from this office. And so the question resolves itself at the outset into two—first, as to the legal power; second, as to the facts that have been presented.

Now, do not misunderstand me. I do not mean to enter into any wide discussion of what the term "for cause" may mean. I simply propose to deal with it as applicable to the precise condition presented here, and that is whether under section 11 of article 6 of the Constitution the Legislature may, because it finds a man guilty of the commission of criminal offenses of the character stated here, remove him from the office of justice of the Supreme Court of the State. That is the precise question. Let us adhere to that and deal with that alone.

I said there were two questions, and that is as to the power of the Legislature to do that under section 11. I grant you that when you consider the language by itself it is broad enough to include anything. It would be broad enough to include your saying that the judge wore a red coat and that was not in accordance with your notions of propriety. I might with entire propriety say the Legislature might under that interpretation say, following possibly the rule of this assembly, that because

the judge appeared on the bench without his coat on, that was an infraction of the dignity of the bench, which justified his removal. Those are the extreme illustrations. Let us not get into any such wide and uncertain fields. Now you will pardon me if I call attention to two things, first, that the government of the State of New York and of the United States was based upon two cardinal propositions; first, that the three departments of the government, legislative, executive and judicial, should be absolutely independent within their own respective spheres, and that no one of them should have the power of supremacy over the other. And the second is that individual rights are to be protected to the fullest extent that the maintenance of the government will justify. Now let me see if I am not right, and you will pardon me if I read just a little from what the Supreme Court of the United States, the greatest tribunal that we have, said upon such a subject, where the matter arose with regard to the power of Congress to punish a recalcitrant witness for contempt. It was said Congress hadn't any such power. The matter was largely discussed in the case of *Kilborn v. Thompson*, and I read just this from it in order that you may see:

"It is believed to be one of the chief merits of the American system of written constitutional law that all the powers entrusted to government, whether State or National, are divided into the three grand departments of the executive, the legislative and the judicial; that the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires the lines which separate and divide these departments, shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons entrusted with the power in any one of these branches, shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department and no other."

Wise words that were written by the Supreme Court of the United States, applicable here, because we are dealing now with

an insidious proposition that the legislative department of this State shall step across the border between it and the judiciary, and assume a supremacy that the Constitution never permitted and never intended to permit.

Now, if you will look at the provisions of the Constitution, you will discover how careful our fathers were to see that this idea should be sustained. The Legislature is the law-making power, and an enactment of the Legislature is the law. If that were true, then the Legislature would undoubtedly be supreme, because whatever it enacted would be law, and that it would be the duty of the executive to see executed, and of the judiciary to apply. So it was said the executive must assent. But suppose the executive does not; he is obstinate; he says "I won't do it." It is not to fail for that reason. If he holds it for ten days, then the enactment of the Legislature is law, notwithstanding. So the obstinate executive was taken out of the way, nevertheless there was the restraint that was put in the Constitution itself. But he might object. He was given the power of veto. If it was absolute, then the executive would be the tyrant and not the Legislature, because he could say "I object," and that ended it. But it did not, because they said that two-thirds of the Legislature could over-ride the veto, and so it becomes a law notwithstanding. All of that was done to fit in the two departments of the government so that each should maintain its supremacy and yet there should be sufficient control to prevent one becoming absolute and controlling the other.

On the other hand, the judiciary can determine whether the enactment is valid or not; compare it with the Constitution, and if it thinks it is not, may say so. But it cannot enact a law itself; it cannot say what should be the law; it cannot amend it, it cannot abridge it. It must determine it, and when it has been determined, it is then for the Legislature to act upon the judgment that has been rendered.

All of these things indicate at the outset that the intention was that they should be independent in their own sphere but that none of them should have the power to exert supremacy over

the other. The matter of removal from office was also in the mind of the people, and when you look at the provisions with regard to the executive department, you discover that a large power was given to the executive, but in every instance that power was to be exerted and exercised with reference to a man in that department. The executive is by the Constitution charged with the execution of the law. So it was deemed right and proper that he should have the power in dealing with those who were the executive arm to remove, but he had no right to go beyond the border of his department. He could not remove a legislative officer; he could not remove a judicial officer. He could remove one within his own department. When it came to the border line, that was the end of his power. Not only that, when he had acted within his department in this summary way, although the judiciary has frequently been called upon to review, they have never hesitated to say that it was a matter within that department with which they had no right to interfere. But to the Legislature was given a power not given to any department, and that was to judge of the qualifications of its own members. I take it that applies to moral qualifications as well as any other, because I assume, notwithstanding what may appear in the newspaper press, that members of the Legislature do have some moral qualities, after all. Now, they could judge of those qualifications, they could remove, wipe him out. The judiciary could not interfere, the executive could not stay its hand. But the lawyers in this body do not need to be told by me of the rule to be applied, that the mention of the one is the exclusion of the power to do anything else. When the power was given to the Legislature to judge of the qualifications of its own members, it was as though the people had said, you cannot judge the qualifications of the executive or the members of the judiciary.

The limited power given to the judiciary to remove reporters and clerks, we need not waste much time over, but we need to consider this, the Legislature is given no power to act in a judicial capacity, never could act otherwise than as a Legisla-

ture. It could not constitute itself a court; no matter how it called itself, it is the Legislature, notwithstanding. And so while you are here performing what may seem to be judicial duties, while you are passing upon questions of fact and questions of law as a court may do and jurors may do, it is as a Legislature and in the exercise of legislative functions and of that alone. Nor can the judiciary assume the right or the power to act as the Legislature. And so far have they gone as to say that the Legislature cannot impose upon the judiciary anything except the performance and discharge of judicial duties. The Legislature has at times thought it was proper to impose upon judges of the Supreme Court and of other courts duties that it turned out upon examination were not of a judicial character. The question was whether the Legislature might do it. They said, no. Whether it was in small or large degree is absolutely immaterial, because when it is conceded in one instance it must be conceded in all.

In addition to that, however, you will find in the Constitution provisions with regard to the removal of a justice of the peace and inferior judicial officers and with regard to the removal of officers for misconduct in office by courts; all of which goes to show the extreme care that was observed by the people when they made the grant of power contained in the Constitution that is the governmental chart.

More than that, the people recognized the fact that officers ought to be removed at times, not that it was assumed that they would be faithless, but they might. And so provision was made for their impeachment by section 13 of article 6 of the Constitution. You will observe it provides for a court for the determination of the question, made up of the Senate and of the Court of Appeals. And it would be well to trace back the history of that, profitable, I think, interesting at all events. It was back in the early times that the Senate and the judges of the courts constituted a court of errors and impeachment, was the court to which cases were brought for ultimate decision. And you will find back in Wendell cases which were decided where senators wrote opinions. And that

was the original idea, that it was a court of errors and impeachment. But with the Constitution of 1846, which changed our judicial system altogether, that went out. The court of impeachment became a simple tribunal to be called into existence whenever there was occasion. The Assembly, the popular branch of the Legislature, might impeach; the Senate and the Court of Appeals constituted the court for the trial of the charge. And when you look in the Practice Acts, you discover that the Legislature of this State has declared the court of impeachment a criminal court, not only for civil purposes, but a criminal court, because it is concerned with the investigation of criminal acts. And it was provided in that article with regard to impeachments that whatever judgment was rendered, there should not be a bar to the indictment of a man under the criminal law. The impeachment was to visit upon him the punishment of removal from office because he was guilty of a criminal offense. It was not intended to be a trial or punishment simply in connection with the office that he held. And you will see the importance of that when you get along a little further to some other considerations I have to make upon that subject. The judgment in such cases is that he be removed from office. It might be more severe, not only removed from office but disqualified from holding office during the remainder of his life, and the Governor has no power to pardon or remit that provision in the judgment. So then we see what scheme our fathers contemplated. It provided for these departments that were to be independent, subordinate only to the extent to which I have called your attention. Supremacy could exist in none as to the other, and it was assumed that they would run on together in perfect harmony as they have, for a hundred years and more.

But it is said, here is a clause in section 11, that they may remove from office. That is true. But what is its meaning? I take it, we will all agree that that is not to be determined by itself; it is a part of the entire scheme; it belongs to the Constitution itself; it is to be construed in harmony with its other provisions; it cannot be construed in hostility to them.

What is the effect? Say now that you may, as I suggested here a moment ago, determine that because a judge goes upon the bench with his coat off on a hot day in the summer that that is sufficient cause for his removal, the question comes to the joint assembly or to the two Houses of the Legislature "did he do it?" If he did, it don't make any difference whether it was a hot day or not, because it is settled, remove him. If that may be done, then the judiciary of the State is under the absolute control and dominion of the Legislature, just as much as though such an act had been passed, and you may as well then say, in place of the constitutional provision that justices of the Supreme Court and of the Court of Appeals shall hold their office for the term of 14 years, it is during the pleasure of the Legislature, under no circumstances exceeding 14 years. No one doubts that. It so appeared in the report of the Senate Judiciary committee. There was no limitation. When you once break down the barriers, once you wander over into the field there is nothing whatever to restrain the Legislature from doing anything they see fit. Is that in accordance with this constitutional scheme? Was it ever intended that the members of the judiciary should be under the control and dominion of the Legislature, so that whenever they decided a case involving the validity of a law, they were to have in mind what effect it might have upon the members of the Legislature inclining their mind to say that it was cause for their removal.

But that is not all. Let us go a little further now, and that is that the Constitution provided something else, as I said a little while ago, that individual rights are to be preserved, they were fortified and intrenched in the Constitution itself. It was said no man shall be held to answer for a capital or infamous crime without presentment or indictment by a grand jury, intended that the safeguards of the law should be about him, that he should not be brought in to answer to the people of the State except in case of impeachment and then he may not plead the Constitutional privilege. Bear in mind, and we need not travel outside of the section, the object of impeachment is to remove

official, get him out of office. It is not a punishment for the crime, because he may be otherwise punished. It is to get him out of the office. If he is sought to be removed because of the commission of these crimes that fall within the class of infamous crimes he has his day in court because it is before a court of impeachment. The people said that is the exception, that he would not have the right to say when he was brought before a court of impeachment and the effort made to remove him because he has been guilty of these offenses or one of them, I am entitled to an indictment or presentment by a grand jury. The answer to that is no, the people have said otherwise. They have said that when you are brought into a court of impeachment that is a presentation such as this constitutional provision provides, and that is held to answer, held to answer under that section when the effort is to remove him from office for the commission of a criminal offense that falls within this section. Now, go one step further. The effort now is to remove a man not by impeachment but under section 11 of the Constitution, to accomplish the identical thing that impeachment would accomplish, to remove him from office. It is to do it for the commission of offenses that fall within the class of infamous crimes and where, if it were impeachment, then he would have his day in court. Am I not justified in saying that he is held to answer at the bar of this body within the meaning of that Constitutional provision? Does it make any difference now as to the form of the tribunal? The Constitution deals with substance, not with shadows. It does not tolerate or permit that we go about in some other way to accomplish the same result, but it means that, when you come to it, the substance of it is that when an attempt is made by the people whether it be by a court of impeachment or whether it be by the Legislature to remove a man from office because he has been guilty of crimes that fall within the class of infamous, he is held to answer for those crimes.

I put the proposition squarely: Isn't it true? I am reminded about what was said by the Supreme Court of the United States in the case of Wall. Let me give a moment's attention to that



case. It was for the removal of an attorney, on an application made by him for a mandamus to compel the court to restore him. I need not say to the members of the bar that are in this body whether a mandamus shall be issued or not is largely within the discretion of the court, depending upon the particular circumstances of the case, but that case was an outrageous one. The United States court was in session in Florida. The court had been in session during the forenoon. It adjourned for dinner just as this body will take a recess for dinner in a short time. The judge went to the hotel. While he was there a mob gathered together under the lead of Wall, an attorney, and went to the jail, and took out a poor trembling prisoner that was there, took him out in the public street and hung him to a tree where the judge, when he went back from his dinner to the court, found the body dangling in his presence, and that was done under the direction, under the supervision, certainly with the active participation of the man whose name the judge for that struck off the roll of attorneys.

Now, if any gentleman here who is adverse to Judge Hooker or to my contention can get any comfort out of that case, he can get a whole lot of comfort on a day when the thermometer is at 96. That is the case of a power in the court, not depending upon this Constitution or any other, but in the court itself, coming down from the earliest time to judge of the qualification of its attorneys and strike off those it deemed to be unworthy. Here was an act committed, as Judge Bradley said, in the very presence of the court. Whatever may have been said in regard to removal from office has nothing whatever to do with the question that we are dealing with here. I call attention to the language of the Constitution itself, and I ask any man who is a lawyer here why the people said except in cases of impeachment, if they did not understand and mean that when an officer is charged with the commission of this class of offenses and is impeached he is held to answer. If he is held to answer under such circumstances, he is held to answer when the Legislature hales him to its bar and says, show cause why you should not be removed.

Let me call attention to a case in the Court of Appeals. I think one of the distinguished members of this body was connected with it, to show how strict they are in saying we are to confine ourselves to the subject. They wanted to create a police court in the town of Fort Edward, in the county of Washington. They did create it, but they were afraid that business would not go to it, and so they said that after the creation of that court a justice of peace of the town should be under no obligation to issue a warrant or hear complaints or to do the things which a justice of peace is required to do under the law. And for fear that some justice might do that, because they might be active and energetic that way, it was said if he did he was not to have any fees. Then, to be sure that nothing would be done, they said if he issues any such process, no officer of the town shall be under any obligation to serve it, and all the poor justice could do, if he had the temerity to do anything at all, was to take his warrant and go out and arrest the poor, miserable victim against whom the warrant was laid. When the matter came up I had the honor of suggesting to the Appellate Division of the Third Department that that was not valid legislation.

SENATOR McCARREN: Mr. Carr, I don't understand your conclusion from that Florida case. What were your conclusions?

MR. CARR: The conclusion was it hadn't anything to do with the matter of removing a justice of the Supreme Court from office except where it might come within the impeachment provision. That that was an entirely separate and distinct power given to the court to remove its attorneys that was always exercised, exercised at the outset to determine as to their moral qualifications, and may be exercised at any time after they have been admitted. Well, one reason, Senator, why, as I understand it, that was urged against Judge Hooker was in answer to our claim that when a justice of the Supreme Court was called to the bar of the Legislature to show cause why he should not be removed for the commission of offenses that fall within the class of infamous crimes, he had no right to say you cannot do that

because I must be proceeded against for them in one of two ways, one by impeachment, and the other by indictment or presentment of a grand jury. I don't say it was read out loud, but members of the House or of the assembly seemed to take great comfort in it because of what may have been said by Judge Bradley, and I only refer to it for that reason. It hasn't anything to do with this case.

SENATOR ELSBERG: You distinguish the case, is that the idea?

MR. CARR: I do distinguish the case absolutely; and you will find when you come to look at it why. I want the members of this body to understand I refer to it simply for that reason and not because I think that it is for one moment an authority upon the proposition that has been here made.

Now, in the Fort Edward case, that I called your attention to, you will see what there was of it, it was a very nice clever scheme to accomplish what the Legislature could not do directly. They could not abolish the office of justice of the peace. It was a constitutional office. They could not get rid of it. They could not get rid of the man but it was thought they might hamstring the man and then they would accomplish the result. The Court of Appeals said, no you cannot do that, what you cannot do directly, you cannot do indirectly.

A VOICE: Four to three.

MR. CARR: Four to three yes; but four to three counts in the Court of Appeals as well as it does in this joint assembly. The majority rules. And I want to call attention to just a few words that were said, I have got a couple of minutes and I think I will read it. I had rather talk than read, but, nevertheless, I will read—Now, this is what appears in what was said by the Court of Appeals:

“The object of a written Constitution is to regulate, define and limit the powers of government by assignment to the executive, legislative and judicial branches distinct and independent powers. The safety of free government rests upon the inde-

pendence of each branch and the even balance of power between the three. Unite any two of them and they will absorb the third with absolute power as a result. Weaken any one of them by making it unduly dependent upon another and a tendency toward the same evil follows. It is not merely for convenience in the transaction of business that they are kept separately by the Constitution, but for the preservation of liberty itself, which is ended by the union of the three functions in one man or in one body of men. It is a fundamental principle of the organic law that each department should be free from interference in the discharge of its peculiar duties by either of the others.

"Nothing is more essential to free government than the independence of its judges, for the property and the life of every citizen may become subject to their control and may need the protection of their power. Not a contract is made except in reliance upon their ability to afford redress if it is violated. Men part with property upon the promise of their fellows, walk the streets by day and sleep in peace at night in the confidence that the silent and unseen power of the judiciary is always ready to protect their rights. Any legislation that hampers judicial action or interferes with the discharge of judicial functions is in conflict with the principles of the Constitution. Whenever a judge, however humble, is authorized by law to hold a criminal court, established by the Constitution, and to require executive officers to serve his warrants and enforce his judgments, the Legislature cannot leave him the power to act, and withdraw from him the power of compelling obedience to his lawful mandates without affecting his independence and depriving him of the essential powers of a judge."

Isn't that entirely proper and appropriate to apply here, when you say to a justice of the Supreme Court, you render a decision inimical to the Legislature and we may say that is cause for removal? On the assumption of that power when it is proven that you wrote it, we may remove you from office.

THE PRESIDENT: We will suspend now. The Joint Assembly stands in recess until 2.30 o'clock. We will meet promptly at 2.30.

At the hour of 12.30 o'clock P. M. the President and Senate returned to the Senate Chamber.

Mr. Raines moved that the Senate stand in recess until 2.25 o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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#### TWO O'CLOCK AND TWENTY-FIVE MINUTES.

The Senate again met.

The hour of 2.30 o'clock having arrived, the President left the chair and with the Senate proceeded to the Assembly Chamber.

#### JOINT SESSION—ASSEMBLY CHAMBER.

THE PRESIDENT: You may proceed, Mr. Carr.

MR. CARR: Mr. President and gentlemen of the joint assembly. I had nearly finished what I had to say with regard to the power of the Legislature to remove for the cause that is alleged in the papers that are presented. Permit me to make a few more observations upon that subject. I tried to make it clear that it was not my intention to enter upon any discussion of what was meant by the term "cause" in the constitutional provision, because I assume that every man here will recognize the fact that it is to be determined when a case is presented, and that it is to be considered in connection with every other provision in the Constitution itself.

We can readily conceive cases where cause may exist for the removal of a judge of the Supreme Court or of the Court of Appeals—physical incapacity, mental incapacity—things which do not reflect anything in the nature of discredit upon the man who may be removed. Manifestly those cases were intended to be covered by this provision. Whether it was intended to go beyond that or not is a matter, I take it, that must be determined whenever the case is presented. But, bear in mind one thing, and that is when you come to deal with the punishment that is inflicted the consequences of the act, see how far that gives us

light. If an officer is impeached, the Assembly presents the articles of impeachment at the bar of the Senate. From the time those articles are presented, he is suspended from the functions of his office. Why? Because when such a charge is presented against him as that he ought not to be permitted to continue in the discharge of the duties of that office. And if he be tried, and if the judgment of the court be that he be removed from office, it may be that he never again can hold any office of trust or honor within the State of New York. Fit and just punishment, if he be corrupt and wrong. Fit and proper punishment, if he be guilty of offenses such as are stated in this document that is before me. No such provision attends these proceedings. The officer is not suspended; he has a right to continue in the discharge of the duties of his office until your resolution shall be passed, and when it has been passed he is just as eligible the day after its passage as he was before. For anything that you can do, anything that you can say, the executive of the State might appoint him to the vacancy you have made by the resolution of removal. He could discharge the duties. The people might elect him, and when the Legislature met again at the beginning of the new year, he could confront it with smiling countenance and in the language of the comic part of one of the Sunday papers say, "Romeo is here again," and what is the Legislature to do about it. I speak of that as showing that this provision was never intended to meet a case where there was moral obliquity, where there was any unfitness because of the commission of crime to hold the office, and that it was intended by the people should be dealt with by a court of impeachment, where he could be not only removed, but where the sentence of absolute deprivation of the holding of office would follow. But I am told that the causes for impeachment are narrowed within what we have here in the statutes. Suppose that should be true—that is a legislative declaration. The power is in the Legislature to broaden or enlarge or to extend at any time or under any circumstances. It is a legislative act.

In the Constitution of 1777 the people saw fit to put in that

instrument itself the cases or causes for which an officer might be impeached, but when the Constitution was passed or adopted in 1821 that went out, and since that time it has been absolutely within the control of the Legislature to say what shall be the causes for impeachment. And I take it whenever a case is presented that satisfies the members of the Assembly that the officer ought to be impeached, they will say so, and they will present the articles at the bar of the Senate, and the court will be organized for that purpose. No difficulty arises from that. And in addition to that is the fact that the Legislature has already provided that cases may arise where an officer may be convicted of a crime. It was said by one of the counsel in this matter before the judiciary committee, "Why, a judge of the Supreme Court ought not to be a burglar by night and a judge by day." I agree to the proposition. But when you talk about his being a burglar at night, that is a question to be determined as the law provides. Whether he is a burglar or not is to be determined by the verdict of a jury. It is not to be determined by the Legislature in advance of any inquiry elsewhere. But the suggestion is made that the Legislature has some broad, general, undefined supervisory jurisdiction. Suppose the executive officers, those who are charged with the administration of the criminal law, fail to do the duty that devolves upon them. they don't see that the man is indicted, they don't put him upon trial. Must the Legislature sit by, and can they not exercise some power or authority in that matter? Where is the grant of power of that kind? This is not an appellate jurisdiction. Where in the Constitution of the State or in the Federal Constitution is any power like that given? For these are offenses against the Federal law as set forth in section 5440 of the Revised Statutes of the United States. Suppose now that the executive officers of the United States did not do their duty, did not see that he was indicted and put upon trial, where is the grant of power in this body to supervise that matter and say, because they did not discharge their duty, we will interfere and will visit punishment upon the man that they did not punish? Carry a step further, if that supervisory jurisdiction exists at all, it

must exist if he had been tried in the United States Court and acquitted. Suppose that had been the case—indicted for a conspiracy, the jury had acquitted him and this Legislature said, “We are not satisfied with that verdict; we have the supervisory jurisdiction, and we will therefore hale him to our bar and have him show cause why he should not be removed for the commission of this offense.” It would be no answer for him to say “I was indicted by the United States Court, I was tried in that court and the jury acquitted me,” because the Legislature says “We are superior to the law, we have a supervisory jurisdiction, and we can look into that matter, and we are not satisfied with what the United States officers have done, so we can remove.” That is the argument, and that is the proposition when it is brought to its logical result.

Now, let no man here misunderstand the position I take; there is no lack of harmony between what Mr. Stanchfield said in the opening and myself. He said this was a court; it has all the attributes of a court, nevertheless it is a court made up of a legislative body discharging the legislative functions and nothing else. If it be a court of impeachment, while it is true that Senators have taken their constitutional oath of office, while it is true that judges of the Court of Appeals have taken their constitutional oath of office, nevertheless when it comes to the matter of investigation here upon impeachment they take a new oath to discharge their duties as members of that court. It is a part of the judicial system of the State. You, gentlemen, come here as legislators, having taken your constitutional oath of office at the beginning of your term. There is no probing of your conscience as to this particular case by a new oath that may be taken because of the new duties that are here; you do it as legislators in the form of a court; witnesses are sworn, you hear the testimony, you are the jurors, the judges of the law and of the facts as bearing upon the particular case that may be in hand. I only speak of these things and suggest them to your minds, in order that you may see and understand how plain and clear it is when you seek to determine



whatever may be the meaning of that constitutional provision. It never was intended that you should sit here and determine the question of the guilt or innocence of any officer that was brought before your bar for an offense that comes within the class of infamous crimes; the constitutional provisions as to individual rights, individual liberty and as to the security of the person stand squarely in the way and they are not to be disregarded. They cannot be set aside, they must be recognized. When the whole is put together it is found harmonious; when the theory I have advanced is carried out the arch that was formed for the maintenance of the government in three departments entirely separate and distinct is complete; as long as they remain in that condition they are absolutely secure against all the shocks of time. When you change their relations, when you change their relative proportions, the arch is of no more value than the heap of stones that may be gathered together by the unskilled hand. When I say it is to be in harmony with these other constitutional provisions I mean exactly the propositions I have presented. When it is put together, see how it works, how harmonious it is, how it all fits one with the other; the machinery is proper, the judgment is in accordance with the case that may be presented, when a case is presented which shows that the party charged has been guilty of those offenses that are infamous crimes, that he ought to be removed from office and never again to hold office within the gift of the people, within the state in which he lives.

It cannot be possible that the people intended that such a weak, such a useless remedy, should be provided that if a man was guilty of these grave offenses it stamped him as being utterly unfit of holding an office of trust or honor; nevertheless he might come back in that office and there was no power to prevent.

Of course the question comes to the members of this body to determine and decide: While it may be true it has been discussed in the newspapers and said that this argument is presented by Judge Hooker's counsel, although an answer was never

presented or argument made, my experience has been when a man, whether in a newspaper article or elsewhere, states a proposition with a view that he may refute it, it is pretty certain that he stated it in such a way he can refute it. My argument before this body here is this is an open question to hear and determine; if you have made up your minds in advance and say there is no question in regard to it, then we have not what the Constitution provides for: a hearing before a tribunal that is fair, impartial, unbiased by any previous judgment that they may have formed.

When he appears, as I stated before, in a court of impeachment, he is held to answer. When he is before your bar, he is held to answer just as much; you cannot change the substance by changing the form.

Now, let us deal with the matters of fact that are presented here. What I have argued so far, if I am right in my contention, this whole matter ought to stop here, but looking into the facts with reference to them I have something to say.

The counsel who last addressed you, representing the prosecution—because I may with justice, not with offense, speak of it as the prosecution—said it was the happiest day of his life when he stood here and asked you gentlemen to disgrace and dishonor a justice of the Supreme Court by removal from office for the cause that is alleged in what I read. What may be his frame of mind when he puts it that way, I don't know. I say to the members of this joint assembly that it is the sorriest day of my life when I find that a justice of the Supreme Court is here in peril of being removed under such circumstances for the cause that is alleged in these papers. And when he states that it is the happiest day of his life when he can advocate it, I thank God that he and I do not occupy this platform at the same time. What reason may have been underneath, I don't know. I leave that for you to infer. It could not have been simply for the purification of the judiciary. But I can, by way of suggestion, get it in my mind what there may have been—that if you remove, there will be a vacancy to be filled.

Who so fit and proper to fill that vacancy as the gentleman who has stood here and urged you to remove. The placard "Barkis is willin'" may already be in hiding. Very likely it may be presented when you shall have removed. And if it is, and should appear upon the back of the gentleman who made that remark, I can well understand why he would say it was the happiest day of his life when he was here asking you to make the vacancy that he might afterwards fill. But I take it we are, or ought to be, clear beyond any narrow view or any personal feeling. We ought to get up to the level of statesmen if we can, because this is a statesman-like body. I do not belong to it, never did, but I have understood from my earliest day that the Legislature represented the statesmen of the State, and I have looked up to them in that view. I do so now and I take it that this question is not to be determined upon any narrow lines; it is not to be determined with reference to any political preferences, but it is to be determined as we would have a question determined by statesmen doing what is for the best interests of the State and the best interests of the people; and when that is done in that way, then we have no occasion to make complaint.

Now, let us deal with the first proposition; that by connivance and agreement with George W. Beavers while he was a representative in Congress and a justice of the Supreme Court he procured the appointment of Frank P. Ball as a laborer and afterwards clerk in the Fredonia postoffice, with intent to defraud the government of the United States. That is the charge. Let us deal with the matter as it is. Is it true? Upon the subject permit me to say that there are three rules, as I take it, by which the gentlemen of this assembly ought to be governed. There would be in court of justice, and I know no reason why the same rules are not applicable here. The question was put by the Senator from the Oneida District—I cannot recall the number, so you will see how unfamiliar I am with the members of this body, however much I may have lobbied with them,—whether the burden of proof rested with the pros

cution and whether the matter of reasonable doubt applied; and I listened with curiosity and interest to the answer that was made, because we are here to answer a criminal charge, to show cause why we should not be removed, and I know of no reason why we may not have the same protection the law puts upon the meanest and the humblest citizen of the State when he is called upon to answer for the commission of a crime.

Let me call attention now to an exceedingly simple case where it seems the court had something to say upon this subject. It was a case of the removal of an attorney under the broad power that the court possesses to remove an attorney because they are officers of the court. The question was presented there, what were the rules to be applied? And let me read now—it is a case in the 1st Hun, there is no name given to it, I assume because there was a desire not to reflect upon the attorney, but never mind whether it was so or not. This is what was said by the General Term in the First Department:

“The court, after an examination of the evidence, concluded in view of the respondent’s positive denials and explanations, that it was not sufficient to justify the respondent’s degradation, and punishment that the proceeding was penal and should be sustained by evidence free from serious doubt.”

That was with regard to the removal of an attorney. We are dealing with the removal of a justice of the Supreme Court from his office. Should any different rule apply? It was said when we were before the judiciary committee that it was not an edifying spectacle for a justice of the Supreme Court to say that he was entitled to the benefit of the reasonable doubt. Why not? He is charged with the commission of a crime. It is said in the papers here, Show cause now why you should not be removed because you have been guilty of these various things. He says, I am not guilty. If it was the trial by indictment where he was indicted for the conspiracy, he would be entitled, whether judge of the Supreme Court or a simple individual, to that rule to which I have called attention that any reasonable doubt was to be resolved in his favor.

I said there were three rules to apply. Let us get back to them and see. The first is that the people are here, the prosecution, asserting that he has been guilty of these things and for that reason he ought to be removed. Assertion does not prove it; the burden of proof is upon the prosecution to prove the fact, to prove the allegation. That must be true whether it be an individual or whether it be a justice of the Supreme Court against whom such charges are made.

The second is what I have said here in this quotation, that if there is a fair and a reasonable doubt upon the evidence presented, he is entitled to the benefit of that doubt. There is no presumption that he has been guilty of wrong-doing. Especially is that true when his brethren on the bench, men who are perfectly conversant with what he has done, come here and say that his conduct has been such as shows that he is entirely fit and competent to be a judge of the Supreme Court. So I have the right to say that upon this testimony the reasonable doubt is a thing to which he is entitled.

The third is this. While it is undoubtedly true that you are not bound to believe the testimony of witnesses who may have been produced by the prosecution, nevertheless when you disbelieve, when you strike it out as not worthy of belief, you cannot find the fact in the absence of evidence in the case. In other words, to put it in a clear and concise form, if you believe the testimony of the witnesses for the prosecution you must acquit; we won't believe that evidence, there isn't anything more, therefore we will convict. That is the argument that is presented. Such an argument presented in a court of justice would not receive sanction for a single moment. Yet that is a proposition that is here.

Now let us go back to the Ball matter. Frank P. Ball—and you are to bear in mind who are the persons concerned in it, because I take it we will deal with it as reasonable men and not with spider eyes of suspicion, but look at it in a fair and in a candid way—Frank P. Ball had lived in the village of Fredonia all his life. He was thought well of by everybody. No one states

anything to the contrary now. Honest, upright, adhering to the obligations he made under all circumstances and conditions, that was the record that he had down to the time when this oil speculation began. Remember that is the kind of man we are dealing with. Warren B. Hooker had lived in that community for many years. Faithful to his friends, honest in his dealings with the people with whom he came in contact, winning in his way, loyal to everybody, ready to do whatever he might to aid them; and with that disposition and that character when he was 32 years of age he became a representative in the House of Congress in a district that was made up of these three counties. Ordinarily those counties—I think I may speak to the members of this assembly in accordance with their knowledge and experience—when a man from one county has served two terms it is time for him to get out of the way for an ambitious statesman from another county to occupy his seat. When there are exceptions, it is because a man has demonstrated by his conduct that he is better fitted, better qualified to look after the interests of his constituents than it would be to make a change, and that is what occurred in his case. Elected in 1890, he went down to Washington and served there faithfully; served there with credit; because when it came to 1895 Thomas B. Reed, one of the biggest men in the country, autocratic, if you please, in his management of the House of Representatives, yet with keen, clear eye as to the honesty of the men who made up the members of the House, appointed him chairman of the committee on rivers and harbors, an important committee of that House. Mean to tell me that if Thomas B. Reed during the time he had been there had discovered in his conduct anything at all to show that there was moral infirmity about him or crookedness in any respect that he would ever have designated him as chairman of that committee? Everyone knows better than that. He appointed him there, and continued him down to the time when he had been reelected in 1898, when he resigned his office to accept that of justice of the Supreme Court that was tendered to him in consequence of the unexpected death of Manley C. Green. He had climbed until he

occupied a prominent place, he had endeared himself to his constituents. They had found him loyal and true. No one had discovered anything of wrong, anything of moral obliquity in him up to the time he occupied the place to which he had been thus elevated.

Now, he was the second man, the one that was dealing with this matter who is charged with having made this wicked, this iniquitous agreement with George W. Beavers. George W. Beavers was down in Washington, superintendent of salary and allowance division. He had been there for years. So far as his superiors knew at that time, honest, straight, discharging the duty he owed to the government. So far as Warren B. Hooker knew he was that kind of a man. Nothing to indicate the contrary. But did he see him with regard to the appointment of Ball? No, that is not the fact. He went down to Washington after Ball had made application to him, and saw Perry S. Heath, the First Assistant Postmaster-General, and told him that here was a man that he would like to get an appointment for if there was any place for him in that office. Straight after that Perry S. Heath, First Assistant Postmaster-General, writes the letter that has been read in your hearing here of October 11, 1898. Beavers connected with it? Where is the evidence of it? The letter don't show it. The testimony of Judge Hooker is to the contrary. Suppose you strike out Judge Hooker's evidence because he is interested here, what have you got except the paper, and upon what can you base the conclusion that then, in October, 1898, an agreement, a wicked and iniquitous agreement, was made between Judge Hooker and Beavers with regard to the appointment of this man in the postoffice at Fredonia. Let me read that letter.

"Postmaster, Fredonia, N. Y.,

October 11th, 1898.

Sir:—You are hereby authorized to appoint Frank P. Ball as a laborer in your office with a salary at the rate of \$600 per annum. You will please make this appointment at once and forward a report of the same to this office on form A-45.

Very respectfully—"

And while in the printed record the name does not appear, it is the conceded fact that the letter that went to the postoffice was signed by Perry S. Heath, who was then First Assistant Postmaster-General.

Now, understand what I mean when I talk about this. When you say he made this wicked agreement you must find that agreement was made at a time prior to the time when that appointment was made. Whether anything wrong was done or not we need not inquire, but was there any agreement in the nature of a conspiracy between Warren B. Hooker and George W. Beavers with regard to that appointment. That is a question you gentlemen must take into your minds and under the rules that I have stated here you will readily see there isn't a particle of evidence that would justify such a finding. If there isn't, so far then the charge must fall. But it is said as clerk as well. And it turns out to be the fact that in the month of January, 1899, the designation was changed from laborer to clerk. And that, you find, in this communication that came from Judge Hooker in the first place, on January 16th: "On my return home I find your letter concerning the matter of Frank P. Ball and the Fredonia postoffice. If I remember it, we talked that matter over before I left Washington, but for fear we did not I suggest that I have a great interest in Mr. Ball and want to have him retained in the classified service, if possible."

That was signed by Judge Hooker and later the change was made. Now right there comes in something that has been made much of here, that before that letter was written, the 9th of January, I think, a dinner was given in Washington to Judge Hooker by the Tape Worm Club, whatever that may be. There isn't any pretense that Beavers was there, no evidence, but it seems to be thought that because of the canvas-back ducks they consumed, of the terrapin they had, of the hot birds and cold bottles that may have been suggested as having been present on that occasion some wicked conspiracy was concocted in Washington to which Hooker and George W. Beavers were parties. Well, that is only equalled by what we have read about the famous letter of



“chops and tomato sauce” in Bardell against Pickwick. The query was, why should Pickwick write a letter talking about chops and tomato sauce if he didn’t mean to marry Mrs. Bardell. That was a good precedent for it, well to consider, from that time down to the present whenever one of those dinners be held, whether it be in the city of Washington or elsewhere, no end of ills may be traced to it. Not that there is anything unnatural in connection with it, but so long as it is said there must have been a conspiracy at some time, it must have been when Hooker was there eating the canvas-back duck and the terrapin and the other things that were provided at that dinner. Now, of course, you may say there was no evidence that Beavers was there, but you can guess about it; it was in the city of Washington; Beavers was there, and so you can infer in some way what took place, from what was written afterwards, that there must have been some communication between Hooker and Beavers when you can imagine that this wicked conspiracy was concocted for which you are asked to remove this justice of the Supreme Court. That is the situation. Now stop and think about it for a moment as reasonable men. Why should Warren B. Hooker and Frank P. Ball have entered into a scheme of that kind. What was the reason for it? Arthur R. Moore was the Postmaster, it was in his office that the appointment was made. Arthur R. Moore wasn’t a republican, he was a democrat, an influential democrat, a leader of the forlorn hope of the democratic party out there. It may not be a large party, nevertheless he had shown good generalship in keeping so much of it together. He was thought well of by everybody, every one speaks well of him in connection with this investigation, no one assumes there was anything wrong or crooked about him. Warren B. Hooker was a candidate for re-election. Do you mean to tell me now, that he, shrewd politician that he was, candidate for re-election, would go to Arthur R. Moore and tell him what he would like to do to have a man appointed in the postoffice under his charge if there was anything wrong or crooked with reference to it at all. Would he put in the hands of a political adversary, a club or

power by which he might be injured? Or are we to assume that it is exactly as was stated—Ball had been in the ticket broker's business; this Legislature—not this one, but one prior to that time—had passed a law which deprived him of that business; he was living there, had a vineyard, honest, trying to maintain his family; he spoke to Judge Hooker and asked him if he could not get him an appointment? What did Judge Hooker say? Why, he might be able to get him a place in the Washington office or somewhere in Washington, and so he went to Moore, and this thing was done. Where is anything here which justifies you in finding or coming to the conclusion that there was any wicked conspiracy under which he was appointed? Why Ball didn't do any work. Granted. Said my brother counsel who argued, a duty devolved upon Judge Hooker—to do what? To look into the postoffice, to see whether he was discharging his duties. We have assumed, and I say of right, that it is the duty of the officers, the sworn officers of the government of the United States to see whether there be a proper place to make an appointment. It is their sworn duty to see to it that the men who may be appointed discharge their duties. They had the argus eyes of inspectors who went there from time to time, they had the amplest opportunity to investigate and determine. Where is the duty that devolved upon Judge Hooker? I might appeal to the members sitting in this assembly, to their personal experience as to the many cases where they have recommended persons for appointment to office. Did it ever occur to them when they signed the recommendation that a duty devolved upon them to follow and see whether there was a place where they might be put, and then to see that they properly discharged their duty?

I imagine every member of this body who has made recommendations of that kind would content himself with the idea that if those in charge find the place where an appointment may be made, it is for them to see whether he properly discharges his duty.

But it is said there were a whole lot of crooked things in that connection. Is Judge Hooker connected with them in the

slightest degree? Pay rolls had been put in. Under the regulations of the postoffice department the pay rolls were to be made out in alphabetical order, to be complete and then they were to sign as they received their money. It is said in this testimony here, that when these pay rolls were made out and the other clerks signed Ball's name wasn't there, and that was evidence of crookedness. Whose crookedness was it? Was it the crookedness of Judge Hooker? Was he expected to follow these pay rolls and find out how they were made out? No suggestion to him, no intimation to him. While it may be true that he did occupy a prominent place in Fredonia, it does not follow that any such duty devolved upon him. Why, he might have seen who was there in the postoffice. That is possible. But here is the fact, he was away from home discharging his official duties; when he came home he was concerned with the disposition of the matters that had been gathering. He wasn't a man who went wandering about town at night; he was a home body; stayed with his wife and his family.

But he ought to have seen the sign down at Dunkirk, ought to have seen the notice in the Fredonia paper. Well, I will have to plead guilty myself. A whole lot of things appear in the newspaper that I don't happen to read. My wife sometimes calls my attention to it, and then I read it. But when I look it over, as the man of business does, my attention is never attracted to these things in the way of advertisement, because the man of business and of affairs has something else to do.

Went down there into his office—never. Saw him out on the trolley car—possibly. Suppose he did. Where is there anything in that which would justify you in coming to the conclusion that way back at the time when Ball was appointed upon the recommendation of Judge Hooker and Perry S. Heath, he assumed or believed or supposed that anything wrong was to be done with reference to it?

I thank the counsel who represented the prosecution here for saying that he is to be judged by the situation and surroundings at the time when he made the recommendation. No other way

can you deal with it properly or justly, and when you deal with it in that way, what was there in his mind that indicated that it was not a proper appointment to be made? Why, Ball was indebted on a note. Yes, way back in 1896. Went into an oil speculation. He isn't the only one that went into speculations of that kind. It seemed to be a pleasant and taking enterprise—\$10,000 to be paid down for a \$32,000 property and all the rest of the purchase money was to be paid out of the oil that was to be pumped out of the well. Who wouldn't be deceived by a proposition of that kind? How many members of this joint assembly that would be proof against a proposition of that kind? But Ball went into it. He had not money but he had what was just as good as money; he had credit; made his note and went to Mrs. Hooker to indorse it. Why? He had known her for years. Her father had been president of the bank where he had been employed. She knew him to be an honest man; knew that he had built up this property and made this vineyard, and was entirely responsible for the note, and says, "Yes, I will indorse it." She had no thought then that he was going to be appointed in the postoffice and his salary would be applied to this note. Not at all. That was in 1896. But the oil speculation did not turn out as they planned. The oil was not enough to pay the expenses. They wanted more wells; it was a regular *Oliver Twist* performance and continued to call for more, and when they asked Ball to put up his proportion, like a man he did. He had not the money; he borrowed it from the bank; he went to Mrs. Hooker and asked her to indorse the other notes and she did, did it as a friendly thing to him, did it as an accommodation, did it to help him in the matter and without the slightest idea that thereby she would be relieved from any of the burden growing out of the expenses of this transaction. So in the month of March, 1898, when you look at this record, the history of these things, you will find that there were notes in the bank made by Ball, indorsed by her and amounting to this three thousand and odd dollars. She had assumed the obligation then. When they came down to September, 1898, and the change was

made, these three notes were taken and put together, one note was made, the three notes disappeared, and they were the notes upon which she was the indorser; and bearing in mind in September, 1898, whether that was in contemplation of his employment in the first place or not, no new credit was given and no new obligation was incurred, but those obligations had been standing there upon which she was contingently liable for six months before.

I call your attention—I don't want to take up your time because my time is limited—but you will find it on pages 368 and 369 of this record, and there you will read the history of these notes, down at the bottom of page 369 "Maker F. P. Ball, State Bank of Forestville;" that was where the note was held at that time. "\$800, F. P. Ball, maker, State Bank of Forestville. \$1710." "F. P. Ball, E. F. Sheldon, \$500." That was renewed. Down below you will find "F. P. Ball, State Bank, Forestville, \$824," and opposite these is the significant mark, "October 6, 1898." For then the three thousand and forty dollar note had been discounted by the bank—and simply proves what I am stating here—no new obligation was incurred, no money was advanced; she did nothing except to put her indorsement upon that note. Now do you mean to tell me that for the purpose of securing some payment of this note of that amount she or with her husband conspired, along with Ball, to get him into the postoffice department, where he might get a salary without rendering service, for the payment of that note. That is the proposition. It was for that purpose, they say, and see what happened. Now that is the reasonable character of it, reasoning from the beginning. Now see what they did. He did make payments on that note. How much? Down to December, 1899. Four hundred and a few dollars. And no matter where it came from the note then was twenty-six hundred and some odd dollars that she was on. Assume now for the purposes of this argument an agreement had been made by which he was to be appointed in the postoffice and his salary was to be applied to the payment of that note. What earthly reason existed for her going to the Fredonia Bank and

saying, "Here, I will turn out to you twenty-four thousand dollars of Seneca oil stock I have in order that I may be released altogether from obligations that you hold, including this Ball note?" Why? Acquiesced in by her husband, the bank acquiesced in it and took the stock. Released her absolutely, because from that time on her name never appeared upon that note, but they accepted Ball as being entirely responsible. These are the things that ought to occur to every reasoning mind. When we deal with them we see that there is not the slightest foundation for the claim or charge that in 1898 this conspiracy was entered into and this wicked agreement by which Ball was to be appointed and was not to render any service and was to obtain the salary to be paid upon that note. How explain these things to which I have called your attention upon that theory?

I said Ball was honest. Wasn't he? I said he had the good opinion of people. Hadn't he? Why didn't they after these things occurred, when the matter came out and when Hudson and Tiffany and Colburn went there with a view of getting something from him that would be derogatory to Judge Hooker, what did they say about it, what did they say upon the witness stand when they were examined. Ball was a man of good repute and they assumed he would tell the truth when he was brought before a legal tribunal. Do they mean to say that the Assembly judiciary committee was not a legal tribunal? yet he was there sworn, and gave his testimony and they do not seem to be satisfied with reference to it. Yesterday counsel for the prosecution said to Judge Hooker when he was cross-examined, "You know now that Frank P. Ball was nothing more than a common thief." Well, that sounds good; but stop for a moment and see what this record discloses. When the government required that this money be returned Taylor talked to Ball about it and what did he say? Tried to sneak out of it, tried to say, "Well, I have got the money get it the best way you can." He said "No, if anybody is to pay back this money I am the man to pay it back. I got the money and I am the one to pay it back to the government or to you." Isn't that the honest man? Isn't that the man who recognizes

his obligations? Is that what a common thief does? And he did. Like a man he gave his note, paid the difference between \$2,500 and the aggregate amount; and since that time honest man that he is he has paid \$650 upon that obligation and there isn't any danger but what it will be paid. A common thief? Is that the way they do in the locality where the gentleman resides who asked the question. A common thief as I have understood is one who never recognized any obligation at all. Here is the man who had received the money; when it was asked back again, he says, "I am willing to stand up boldly, frankly and squarely and say I will pay it back to the extremity," and he is going to do it. Now that was the man who was engaged in this conspiracy. That was the man that Judge Hooker practiced on with this wicked scheme with George W. Beavers. Need I take any more time over that subject? If it is not satisfactory to every reasonable mind that there is no foundation for the charge that is made there with reference to Frank P. Ball, nothing that I could say would aid in that direction. But—and I speak of this here in order that there may be no confusion, no misunderstanding—some gentlemen of this body may say, "Well, when Judge Hooker became justice of the Supreme Court, it was not exactly in accordance with propriety as I look at it for him to recommend Ball's change or to recommend the appointment of anybody." That is not what we are trying here. We are not dealing now with that matter of propriety. We are dealing with the question of whether in October, 1898, he made this wicked scheme and bargain by which Ball was to be appointed to this place, never to render service in return for the same; and when you find that no such bargain was ever made, when you cannot find it in this evidence, then that ought to come to an end. But that is not all. I have taken more time with that than I intended, and if any gentleman of this body believes I am taking too much time with it, I will be glad for him to tell me so.

Now, Maurice Hooker was appointed in January, 1902, as a laborer in the postoffice. And it is said that was through a scheme or connivance or agreement between Judge Hooker, Melvin

H. Taylor and George W. Beavers. Well, Maurice Hooker was a boy who had been brought up on a farm. I can sympathize with him, I was brought up on a farm myself. I know what it is for a boy on a farm to work. I can readily understand the kind of work he did while he was there. It was apparent that he was anxious to secure some more education than could be obtained in the district school. That was pardonable. He is not to be condemned nor criticised for that, nor is his uncle to be criticised because he was willing to have him appointed. The misfortune about it, I take it, is that Warren B. Hooker, then judge of the Supreme Court, was his uncle, and he ought not to have recommended his appointment to any place. Well, that is a matter of opinion. I would not have to go far around this Assembly to find cases where recommendations had been made by the members here of those who are related to them in a near or remote degree. It hasn't been recognized nor it hasn't been supposed, so far as I know, that if a man makes a recommendation it must be of someone who was a stranger to his people. And if he does recommend one that belongs to his family, why he must assume all of the responsibility.

Well, what happened? He came down there to school. Taylor was postmaster. Taylor asked that he be appointed a laborer in the office. Taylor knew whether he wanted anybody like that there. He gave a letter to Judge Hooker and Judge Hooker sent it on to Washington. He said he hoped it could be done. Do you mean to say when that was done Judge Hooker understood Maurice was to be appointed in the office and that he wasn't to render any service?

Do you not mean to be reasonable, men, and say he believed, and supposed at the time there was nothing whatever to prevent his discharging the duties of the place before and after school, and he might thereby earn some money that would aid him on his way? Assume that to be true, was it a wrongful thing to do? Was it a thing for which he should be criticised or condemned? A judge of the Supreme Court, I admit. We may have different views as to whether it was proper for judge of the Supreme Court to make any recommendation for appointment. Never mind.



That isn't the question. Very likely we might all agree upon saying that if we had to do it again, we wouldn't do it, but when we come to that conclusion and render that judgment it is with knowledge of what took place afterward.

We are to get back and deal with the situation as it was when these men did it, when the recommendation was written, with the knowledge he had. Didn't suppose he would do the work? Why not? A boy on a farm wouldn't do the work of scrubbing a floor and washing the windows? Why not? A boy anxious to get his education, anxious to get something by way of competence for the services that he performed, that he was above doing that? I take it not. But I can readily understand and I deal here now with the suggestive feature of it, because we may as well indulge in suggestion on our side as to permit them to do that on the other side, that Taylor had been appointed to this office on the recommendation of Judge Hooker. I can see how he thought it would be a nice thing for him, in recognition of the service that had been rendered, to ask for the appointment of the judge's nephew in the postoffice. That is what I take it pretty nearly every man around this circle would say. That was what would be floating in his mind, assuming now that he was the right kind of a man and recognized and appreciated what had been done in his behalf. Now, when he got him appointed, I can see how Taylor said, he is a nephew of Judge Hooker, a justice of the Supreme Court; it is not really the thing to ask a nephew of a justice of the Supreme Court to scrub the floor and to wash windows. I have got a better scheme than that. I will get somebody to do that work. I don't know why I may not; there is such a thing as farming out some of these contracts. I can do that, and whatever is left over I can pay to Maurice and that will help him in his way through school. Now, suppose that took place. Assume that was running through his mind, and that, acting upon that, without consulting any person he did so. You may see Taylor did not do the right thing. I will agree. That is not the question. Did he go to Judge Hooker and say to him, I don't think it is the proper thing for your nephew to be here scrubbing

floors and washing windows; I will provide for this in some other way? Nothing of the kind. No suggestion like it. Well, you say that the testimony you have here is given by those who are interested in this matter and you have a right to disbelieve it. Strike it out if you wish. What is there left? On what will you base your conclusions? On your own judgment, from your own idea of what might have occurred? And that in so solemn and serious a matter as one that involves the question of whether a justice of the Supreme Court ought to be removed from the office that he holds? Or will you deal with the testimony that is here and say that under the rule in this case there is such grave and serious doubts upon the question that no such power ought to be exercised. Understand me, I am not here to defend or advocate or urge that it is entirely proper for a justice of the Supreme Court to make recommendation to office. I do not deal with that proposition at all. It is not here. I am dealing with what you have presented, the charge of why he should not be removed from office because he connived and agreed and conspired to secure this appointment in order that the Government of the United States might be defrauded.

That is not all. Two other classes of cases—and I speak of them together, because they may be properly so treated—and that is the appointment of Caldwell, O'Neil, Pemberton and Cooper. They talk about Minerva Jeffrey. Well, you can talk about Noah in the ark, if you wish. Is there any evidence here that Judge Hooker ever knew Minerva Jeffrey, that he ever recommended her for appointment, that he ever suggested it to a single human being? Is there a word? Nothing of the kind. Yet you are gravely asked to take it into consideration as one of the things that reflects upon the honor of this justice of the Supreme Court. The evidence is in the record that she lived in Washington and owed her appointment to Beavers. It is said that Beavers is a bad man. It is shown in one of the newspapers that he is a convicted man. I had not known that before. Never mind, I am dealing with the situation as it was then and seeing what was the obligation

resting upon the man who made the recommendation to him and wrote letters to him with the knowledge that he had then.

Now, it so happened that there was talk in the month of December, 1898, and in January, 1899, about the putting of the Fredonia postoffice in what is known as the classified service. Let us get at that a little. We hear a great deal about the civil service. I take it there are some members of this body who can remember a time when appointments to office were made without the slightest reference to a system of that kind. It started up only a comparatively short while ago. Men thought with the multiplication of offices there should be some device by which they could be regulated by law and not depend upon the caprice and whim and will of whoever might be in office. That gave rise to much debate, and those who had been recommending persons to office, those who had been having the benefit that would come from patronage of that kind were not kindly disposed towards the new system. They feared it would shear away from them some of the power they possessed. But, however it may be, it became a system of the government. The Civil Service Commission was organized. Its headquarters are in the city of Washington. The head of the whole business was the President of the United States. He could recommend such rules for the civil service as he saw fit to recommend; he could, if there was occasion, take out of the civil service some classes of persons who had otherwise been in it; he was absolute; no one had the right to sit in supervision of what he did. John R. Proctor was the President of the Civil Service Commission down to 1898. And you will understand that when they talk about the classified service it was that a postoffice or whatever other government department it might be, came within the civil service rule and became a part of the classified service. It was recognized as a fact that when a postoffice, if you please, went into that service, it was a question with reference to persons whose names were on the rolls at the time. Were they to be dropped out and were they to start in de novo and have a civil service examina-

tion, or should those persons go in with the office when it was classified? They said they would go in, when the office was classified and became a part of the classified service. That was what the Civil Service Commission said, and that was the authority, and it was done with the acquiescence of the President, who was the head. So it happened that when the time came that an office was to be classified, when free delivery was to be adopted, there might be two ways in which the thing would be provided for, because it was accepted and understood that when that occurred persons would be needed as carriers to carry the mail. And so the two ways were that persons might be put upon the roll of the office in advance of the classification, and when it was classified go into that service and become carriers and the whole thing would go on without any friction—recognized by the Civil Service Commission, said by them in a letter addressed by them in the month of January, 1900, to the President, that it was perfectly legal so to do. That was in 1900. Now, this matter with reference to the Fredonia office going into the classified service was in December, 1898, or early in January, 1899. Is there any evidence here that Warren B. Hooker at that time knew that the Civil Service Commission had made any recommendation to the President as to a change in the rules? Certainly not. They had not proclaimed it in the newspapers, they had not invited attention to it in any way. They simply addressed the communication to him; they did it two years before 1900, in 1898. They asked him or suggested to him the propriety of making a change in the rules. William McKinley was President of the United States at the time, a man whom we all honor and revere. For some reason that was best known to himself, he made no answer to their letter, put it in the pigeon-hole and left it there. But Warren B. Hooker, in the month of December, 1898, or in January, 1899, had no knowledge that that letter was slumbering in the pigeon-holes of the presidential office. And what did he do? He went down to Washington. Say now that it was not quite the thing for a judge to do. Granted.

He went down there because the office in his home town was to be classified. He talked with the First Assistant Postmaster-General. New carriers would be required. Why, they said, there are two ways in which it can be done. Put now on the roll those as clerks, and when it is classified they will go into the service and become carriers. The recommendation was made. No disposition to do anything wrong. O'Neil, Caldwell, Pemberton, Cooper. Does anybody say they were not fit persons? No one has so suggested. O'Neil had been a coachman in Judge Hooker's employ. That might have been a misfortune for O'Neil, but he was a bright Irishman, and he had lived in Fredonia all his life, and he had worked his way up and wanted to get a place. I don't blame him for it. I don't blame the judge for being ready and willing to assist him if he could. And so O'Neil's name went on, Caldwell's name went on, Pemberton's name went on and Cooper's name went on. They were intended to be not clerks in the postoffice, but they were intended to be carriers when the office was classified, as it was expected it would be. Nobody was mistaken with regard to it, no one was misled about it. It was absolutely legal, entirely within the law, and whatever criticism the Civil Service Commission may have made up to that time was slumbering in the presidential office unanswered.

But there was some criticism in the newspapers up there. Colburn was not satisfied. And so with this in the newspapers, Judge Hooker does what? He goes down to Washington and sees the very head and front of the Civil Service Commission, states to him what the criticism is, and what does he say? You are wrong, you are violating the law, evading the Civil Service Law? Not a bit of it. He says, let O'Neil go in and have the others take the civil service examination. They did, Caldwell took it, Pemberton and Cooper didn't, and their names were dropped from the roll. That is the history of that transaction. But it is said that O'Neil and Caldwell—Caldwell went in under the civil service examination, was paid by Arthur R. Moore, the postmaster during the time after this appointment, that they did not render any service. We will assume that to be true, if you please. Say it is so.

Where is there any evidence here in this record that Judge Hooker ever had the slightest hand or suggestion in making that payment? Now you will see what there was about the payment if you will look at the dates. That appointment was in January, 1899, January 16, I think, January 17. The office was classified on the 1st of April. All the names stood there on the roll. O'Neil went in as carrier. Caldwell had passed the civil service examination. And then the postmaster on May 8th was advised by the department that the appointments of Pemberton and Cooper were canceled. Up to that time they had not been, and up to that time he did not know. Now what did Moore do? Wrote to the department, as you will find from his testimony, to know what effect that had with regard to Caldwell and O'Neil, and he found out from that, in answer to his letter, that they were to be retained on the roll. Then what did he do? Up to that time he hadn't paid them a dollar for this period of time prior to April 1st. Then May 13th, you will see how the dates fit together, then he paid O'Neil and Caldwell for that period of time. Maybe it was wrong, I won't say whether it was or not, but I have got the best evidence for saying that it was not wrong because the government of the United States, the postoffice department, the Civil Service Commission, everybody knew the fact when the investigation was made, these payments were made, they took the checks by which Moore had paid them, but O'Neil and Caldwell, they remained in the service of the government from that day to this. Common thieves are they, to have received that money when they didn't do the work? What does the government say with reference to it? Maintain common thieves in its service? Absolutely no. When the government never has made the slightest move in this matter, never suggested anything being wrong or improper in regard to it as to these two men. I say it is going far to ask the Legislature to remove Warren B. Hooker because he recommended these men to place.

Now, in connection with that was another, and that was Kittie Clark, who was appointed at the Fort Plain postoffice, they say, to evade the civil service law. What civil service law was in force

that prevented it? Let somebody answer. I have called attention to the fact that in June, 1898, the Civil Service Commission did call the attention of the President to the fact that there ought to be a change to that rule. I have called attention to the fact that for some reason satisfactory to himself he put it in a pigeon hole and never answered it. Now bear in mind that it was in December, 1899, while that letter was lying there, while the President had not acted, he made application for her appointment. Was there any concealment about it? Why, when you read it you will discover that no one intended to conceal anything. Look at it and see. Now that letter that was written by the postmaster at Fort Plain, December 14, was: "First Assistant Postmaster-General: In accordance with the provisions of section 419 of the Postal Laws and Regulations, edition of 1893, I have the honor to report the following changes in the clerical force in this office"—now see what he says—"involving no expenditure in excess of clerk hire allowance." Perfectly plain and clear. He did not intend to involve the government of the United States in the payment of anything in connection with this appointment. But that wasn't all. She remained there on the roll. In April, 1900, Judge Hooker wrote a letter that has been commented on here, "Dear Beavers," asking with reference to the salary of Miss Clark. Now see what happened then. Bear in mind you charged him with having been guilty of a wicked and corrupt scheme with Beavers to secure her appointment so she might be transferred to evade the civil service law and defraud the government of the United States. Do you mean to tell me that men who have been engaged in a scheme like that put it on paper? Now when that letter of Judge Hooker got down there what happened? Now outside of this that appears in the letter, "what I wish to have done is, for the postmaster at that place to send her a check, or send it to you;" there is a notation, December 15, that was the date when she was appointed. Now at the bottom on the margin, in Beavers' handwriting, on a paper that went into the public file, is "Has she performed service?" The arch conspirator, the one down at Washington, a party to this wicked scheme, when his co-conspirator up

in Fredonia writes that letter, puts it down on the very letter, "Has she rendered service?" and when it was found that she had not, nothing was paid. The government defrauded? No. Any disposition on the part of anybody to defraud the government? No. Any evasion of the Civil Service Law? No. But it is said it was to evade the spirit of the Civil Service Law.

Well, when a man is charged with the commission of a crime and you try to say that he did it with intent to evade the spirit of the law, you have got into a pretty wide field for the purpose of a conviction, but I take it after all we are to deal with it as reasonable men. Here was the man who was the head of the Civil Service system, the President of the United States, his attention had been called to precisely the condition that is here developed. He did nothing. Is Judge Hooker wiser than he? Is Judge Hooker to be charged with having been guilty of a wrong and the commission of a crime because he did what the law permitted, if the man who could change the law, when his attention was called to it, left the law as it was? Surely if it is needful in order to remove Justice Hooker that we condemn the memory of William McKinley and say that he made a mistake, he failed to come up to the full measure of his duties, it is time we came to the end and said this proceeding ought to cease. Surely you cannot condemn the subject who dealt with the situation as it was when the leader, and the man at the head and with the power to make the change, by his silence said, I will not make it. That is the substance of that. •

But he said "Dear Beavers;" that is an awful thing. I have written a whole lot of letters in my life to men and I have called them dear. Not that it meant anything to them in particular. He said "personal." There is the mischief of it. That means now there was something secret. I had supposed it otherwise. If I want a letter to be considered by a man strictly for his eye, not for the eye of anybody else, I will put "confidential" at the top of it, if I have something that is so secret that I don't want anybody else to see it, if I write at all I will put "confidential" there. The best thing is not to write a letter at all about a



matter of that kind, but if you do you all put confidential there. But here is a man in charge of a department; your letter falls in the hands of a clerk, you want the fellow that is at the top to look at it, and you say "personal." Now that means to go to the man that it is written to; not to conceal it, not to shut it out of the light of day, but it is that he may look at it, he may exercise his judgment and determine what it is proper to do. But there was no concealment about it and not recognized at all by Beavers, because he put that right along with the papers that were in the public files; it was found there when we went to examine them.

"Dear Beavers;" suppose someone—I don't think that anybody would—reading a letter of the present President of the United States, where he said he was delighted to hear from him, should say, that is pretty warm. That is simply the expression of the man, the feeling that is in his mind. No one would criticise it. When Judge Hooker said "Dear Beavers" he said what was simply the expression of a warm and generous disposition, having in mind the position that he occupied then and the reputation that he enjoyed, and there wasn't anything that was wrongful or harmful about it. So much then for those things.

Now a great deal has been said here with regard to a judgment that was obtained against the city of Dunkirk, called the Wirtner judgment, and Judge Hooker is charged to have been guilty of something wrong in connection with that. What was it? Why, he and Mr. Stearns were the joint owners of a piece of property there, the city of Dunkirk had a City Hall park, they intended it to be something that was beautiful for the city; they had their City Hall there and this lot was bought alongside of that park; a building was put up there. It is confessed by everybody to be an ornament to the place; the postoffice was to be put there. No one claims that it wasn't for the best interests of the city of Dunkirk that it should be built, and they did it. Perhaps Judge Hooker ought not to have gone into this enterprise. That was a matter for him to determine. I never knew before that there was anything wrong or unlawful about that. But nevertheless they did. Now it seems that in Dunkirk they have what you

find in other places, fellows who have queer and cantankerous notions. It may have been well founded or ill, but Hogan, whoever he may be, thought it would be a nice time to get even with Mr. Stearns for some fancied things in connection with their previous history, and so he put into the common council a resolution that the fire hall that was in another place be sold and that they put up a fire hall here on the city park right alongside of or in connection with this building. Now there wasn't any particular reason why they should put the fire hall there as I can see. I don't find in this evidence anything which indicates that the members of the common council were of such a belligerent character or so choleric that they needed to have the fire hall right immediately at hand to the city hall, but it was simply done for the purpose of what we call a matter of spite. No question about it. And he got one vote along with his own in the common counsel. Well Stearns evidently didn't think that was quite the thing to do. They had put in a lot of money in putting up this building, and so a resolution was later put into the common council by which the city was to give a lease to them of a certain portion of this lot along their building, so that until it became necessary for the purposes of the city in connection with its city hall it wouldn't be built up against this building. A proper thing to do, as I look at it. The common council thought so; they passed the resolution, the mayor was not of their mind and he vetoed it, as he had a right to do, and they passed it over his veto, as they might. Now, that was the situation, and after that had been done Charles J. Wirtner, a taxpayer, of the city of Dunkirk, brought an action to prevent the execution of this lease on the ground that it was a waste of the city's property. Stearns and Hooker were made parties defendant, the city of Dunkirk was made a party defendant, Scannell of course. Now, that was late in December, and they had an order to show cause why a preliminary injunction should not be continued, and that was to be heard December 30th. Judge Hooker came down there after the action was commenced; he and Stearns talked it over; the answer wasn't drawn that day, it hadn't been drawn before, and I assume that

he had a general knowledge what the action was for. He never saw the answer, no one criticises the answer in any way; it was a proper answer to put in. But it seems that on the 30th of December they went down to Buffalo, and they had the matter up before Justice Truman C. White. I don't think you gentlemen will have any doubt in your minds but that it did come up before him. He says it didn't make any impression upon his mind. Probably not. We are not responsible for that. The fact is that they were all there before him; they all say they were; Warner, the witness for the prosecution, says so; he was there on his way to Albany. The matter was discussed, whether briefly or elaborately is entirely immaterial; but one thing is certain from the evidence, that Judge White said (Whether Mr. Larkins, the attorney for the plaintiff, made a good statement or a poor one), "I don't see as you have got much of a case here." And I am happy to say that I agree perfectly with Judge White in the expression of that opinion.

There is no pretense now that there had been any talk with regard to an abandonment of the suit up to that time, but they went on down, and the 12th of January was the time when the city must put in an answer if they were going to defend. Apparently something took place. The time came around and they were going down to Buffalo to get the matter in shape so that a judgment could be entered. Why? The counsel says why? Why a judgment? Why didn't you simply take a stipulation for the discontinuance of the action? Why should they? A taxpayer had brought an action challenging the validity of this resolution, charging that it was a waste of the property of the city. Weren't they entitled to a judgment in that case as between him and them? That would establish the validity of the resolution for whatever effect it might have.

When you gentlemen, lawyers, here, will look into the matter you will see the courts haven't yet determined how far some other taxpayer is concluded by a judgment that is recovered in an action where one taxpayer sues. But I take it you will all agree with me that it was never intended in the law, where a taxpayer in a

community like that brought an action to have the question of the validity of a proceeding of that kind determined, the moment he was out of the way another man could spring up and so the whole eight or ten thousand could sue. That is what they were entitled to. What did Judge Hooker do about it? Why, they called him up on the telephone and said Judge White had heard the injunction and asked if he would see him, and he did, and asked him to hear the case. What did he say to Judge White that was improper? Ask yourselves that question? Does Judge White say he said anything? Did he suggest to him what the facts of the case were? No. Did he state to him what kind of a judgment they wanted? No. He said to him that he was a party to the suit, which was true, and he couldn't hear it. So he asked him to hear it. He said he understood that they had substantially agreed on the facts, and that was true. That is all of that. Nothing that Judge White recognized then or recognized yesterday on the witness stand that was in the slightest degree improper.

They came down there before him. Evidence was taken. findings of fact and conclusions of law were signed and a judgment was entered on that. And that turned out to be wrong. That is, a judgment was rendered that they were not entitled to. Did it depend upon any misstatement of the facts? Certainly not. Did anybody suggest to him that an answer had been served upon the city of Dunkirk? No one so pretends. Did anyone suggest that in any way under the law they might have a judgment of that kind? No. It wasn't misleading. It was an error of law. The error was made by the judge. It wasn't made by the attorney. I never yet heard that an attorney would be charged with getting a corrupt judgment because he asked a court to render a judgment in his favor to which he was not entitled. We go into court day after day and argue propositions that we know are not sound. We are hoping that the judge won't be wise enough to find out that it is unsound and so we will get the judgment in our favor. But are we to be charged with criminal offenses? Judge White says he didn't look at the papers. That is true. He never examined

the findings of fact or the judgment. So it went down and when the matter came up two years later what did he do? Not what a warm-blooded, clear-minded man would have done, go to Judge Hooker or send for him and say, why a judgment is rendered there that ought not to have been rendered. But he went like a mole to hunt around and see what suspicious things might be found in connection with this judgment. And when the fine Italian mind of the gentleman from Jamestown, along with the district attorney of Chautauqua county set about it, they discovered a whole lot of things. Mysterious, that they went down to Buffalo? There wasn't anything in that. Mysterious, that the findings were already drawn before they went there? Why, lawyers, and I talk now to lawyers in this body, do that over and over again and nobody thinks that there is the slightest claim or imputation that they were doing anything wrong. But what is the answer to it all? According to Judge Hooker's testimony he never saw the judgment whether it was right or wrong. He didn't see it. The parties concerned in it made eager haste to have the judgment that had been obtained made a public record, because it was rendered on the 21st day of January, and on the 23d or 24th they filed the judgment and all the papers in the Chautauqua county clerk's office. Is that what men do when they have got something wrong or crooked?

Why it turned out here yesterday and the newspapers commented on it, in regard to the check to Mr. Farnham, that there was a check of \$65 that was paid to Mr. Larkins, attorney for the plaintiff. I suppose it will be argued to you that that would indicate there was something wrong or crooked on the part of Stearns. I deny it. It is a fair question of fact, not as to whether that is corrupt, on the testimony that is here, but, whether it was or not, what connection had Judge Hooker with it? How is he to be affected by it? When you deal with a criminal act, you must get down to the personal thing that is done by the man. It isn't whether his attorney did something, but it is whether he did, or whether it was done by the attorney with his knowledge and his assent. And when you look at it in that way, you dis-

cover there isn't the slightest foundation, not the slightest claim that there was anything wrong so far as he is connected with it is concerned.

Now, gentlemen of this assembly, this substantially presents our ideas of this case; this is the situation that is here under which you are to act, and you should be well advised of what you are asked to do, and of the consequences that may follow.

You are asked and urged to remove this accused justice of the Supreme Court from an office which you did not give, but which was conferred upon him by the electors of the judicial district in which he lives.

You are asked and urged to take from him his honor, a thing that you had no hand in giving, but has been the product of his efforts.

You are asked and urged to strip from him the good name of his fellow men, a garment of protection against the pitiless storms of misfortune, something which you did not bestow, but which was woven by his own hands in the warp and woof of his nearly fifty years of life.

You are asked and urged to deprive him of the pursuit of happiness on earth, because you know as well as I, that should you remove him for these causes, he will be a marked and branded man wherever he may go, yet that right to the pursuit of happiness was so great our fathers put it in the front of the Declaration of Independence which was incorporated into the Constitution of this State in 1777.

You are asked and urged to deprive a devoted wife of the satisfaction that she may have of reading the unsullied pages of the judicial career of the father of her children and the husband of her choice.

You are asked and urged to rob this boy and girl, just coming into manhood and womanhood, of the privilege of being able to see the seams and lines of the careworn faces of their parents turned into dimples of joy and ripples of pleasure as the shadows are lifted from the household and the clouds roll by.

To justify you in working such a ruin you should have the sternest of necessity and the road on which you are traveling and the means by which you do it should be as clear as the sun at noon.

It is said that there is much in the atmosphere that demands a victim, so you may as well sacrifice him as another. Is that the sense of justice of this assembly? Is that the idea of the men who sit here as jurors in passing upon the question of his guilt or innocence of these charges?

It is said there has been clamor of the public press. I understand the embarrassments under which you labor, I appreciate the difficulties with which you are to contend, but I take it after all this body is made up of fair, high-minded, broad-minded men, not of those who may be characterized as babes in the woods, who are disturbed at the flutter of a leaf or frightened by the chirp of a cricket that may be in their path. There may be criticism and complaint, but you should remember that the lightning flash and thunder roll of the summer storm, while it may be terrifying, does not last, and peace and quiet soon will come. It is only the saplings whose upward growth has been too rapid for the hold its roots have taken on the parent earth for strength and nurture that bends and sways and may be broken by the storm; the sturdy oak and stately pine stand unyielding in its eddying currents and when it has passed are as firm and true as ever before. When the storm has gone and criticism has ended, the purified air will cool heated brow and fevered pulse, and then the returning sunlight, falling on rain drenched leaf and flower, will robe forest, farm and field with a radiant beauty beyond the power of pen or brush to describe or paint. That you may come to the consideration of this grave and weighty matter with kinder and gracious spirit, and with a firm and high resolve to here do all that of right and justice should be done, and that you may act and vote under the guidance of the wise providence whose inscrutable wisdom we are pleased to believe is ever tending for human good is my earnest prayer and last appeal.

SENATOR RAINES: Mr. President, before Judge Coman com-

mences I wish to state that I am informed by the Sergeant-at-Arms, that he has ascertained that Mr. Hennessy is at Narragansett Pier, and out of the jurisdiction of the State.

THE PRESIDENT: The members will please be seated. The chair would request that there be no conversation in the Assembly Chamber during the argument. Proceed Mr. Coman.

MR. COMAN: Mr. President and gentlemen of the joint assembly, it is manifest that during the brief time which is at my disposal I shall have no opportunity to enter into any full discussion of the legal question which has been raised here by counsel for the respondent, or of meeting all the numerous questions of fact which have already been discussed in your presence by counsel upon both sides, but I am quite content that this is so, because the most that I hope or expect to be able to do is to put you in possession of my views, in a general way, upon the legal questions which have been presented, and to call your attention to the salient features of the transaction which led up to the entry of the Wirtner judgment.

I had supposed, until I listened to the argument of counsel delivered here on Friday last, that the question on the jurisdiction of this body to hear and determine the charges which are pending against Justice Hooker, had been settled and settled authoritatively. So far as the general scope and purpose and effect of article 11 of section 6 of the State Constitution is concerned, I shall address no argument to you; I shall ask you to remember that these questions have been fully and carefully discussed by counsel before the members of the judiciary committee of the Assembly, and that they have reached a practically unanimous determination upon the questions raised; I shall also ask you to remember that the question has been before the Senate judiciary committee and has been carefully considered, and that the chairman of that committee has written a most able, learned and convincing opinion upon these questions.

But there were certain questions raised here by counsel on Friday last which, in my judgment, it is imperative to be an-



swered. I do not believe that in a case of this vast importance and far-reaching consequences, a case which will probably stand for generations as a precedent for action of future Legislatures, that that argument can be permitted to go unanswered in this record, or at least, that an attempt should not be made to answer it.

I have listened now, and some of the members of this Legislature have listened, to five arguments by counsel for Justice Hooker upon this question. No two of these arguments resemble each other in the slightest degree, except in the conclusion at which they all arrive, that Justice Hooker cannot be removed by concurrent resolution of the Legislature. We were told first that he could only be removed for impeachable offenses; second, we were told that he could only be removed for offenses not impeachable; third, that he could be only removed for acts not of his volition; and fourth, that he could only be removed for physical or mental incapacity. All these varying decisions have been taken by counsel for Judge Hooker to prevent the Legislature of the State of New York from passing upon the question whether or not he is a fit man to sit upon the bench of the Supreme Court.

And now we are gravely told by counsel that even though he be a criminal, even though he have committed four separate and distinct felonies, not only is the Legislature powerless to remove him, but the people are helpless and there is no remedy for them except to await the expiration of his term of office, unless, perchance, he may be convicted in a criminal court.

The argument of counsel was based upon the proposition that article 6, section 11 of the State Constitution is violative of the provisions of article 5 of the Constitution of the United States. For more than 80 years it has been the settled law of this State and the settled law of this land that none of the first ten amendments to the Constitution of the United States apply to or have any effect upon the action of any State court or tribunal; that those provisions are purely a limitation upon the powers of the Federal government and its courts. For the purpose of bringing the question generally before you, I propose to read from the American and English Encyclopedia of Law, volume 6, page 961:

"While the first ten amendments of the Federal Constitution are apparently unlimited in application by their terms, a long series of adjudications has restricted their scope exclusively to the spheres of the Federal government, its courts and officers. This doctrine was first announced in the State courts, but soon afterwards received emphatic approval in the Federal tribunals, and it has now become the settled law of both jurisdictions, as well in reference to the entire group of amendments as to the specific provisions of each."

The first case that was decided upon this question arose in the State of New York, and is the case of *Jackson vs. Wood*, 2 Cowan, 819. In the statement of the case appears this language:

"It appeared from the record of trial before three justices of Cortland county that on the 14th day of August, 1809, Curry was arrested on a charge of stealing a bag of wheat, and being brought before the magistrate who issued the warrant, he refused to give bail for his appearance at the next general session and would not consent to a trial before a court of special sessions without a jury. The justice committed him to the custody of the constable, and at the expiration of 43 hours, the prisoner still refusing to give bail, a court of special sessions was organized, agreeable to the provisions of the act of the 24th of March, 1801, which proceeded to the trial and conviction of the prisoner."

Walworth, circuit judge, writing the opinion, says: "The validity of the act of 1801 in reference to the Constitution of the United States depends upon the fifth and sixth articles of the amendments to that instrument. By the fifth article, no person shall be held to answer for a capital or otherwise crime unless on indictment or presentment by a grand jury, and the sixth gives to the accused the right of trial by jury in all criminal prosecutions. If either of these amendments are restrictive upon the powers of states or applicable to criminal prosecutions under the state laws, the trial of Curry was a violation of the Constitution, because he was tried for an infamous crime without indictment or presentment and was deprived of the benefit of a jury trial. But from the investigation I have given this subject I have

come to the conclusion that none of these amendments are applicable to the individual States; that they are restrictive upon the powers of the general government only and applicable to the proceedings under the authority or laws of the United States. I am, therefore, clearly of opinion that these amendments were never intended to limit the powers of the State or to control the proceedings of State courts, and that Curry was legally and constitutionally convicted of an infamous crime which disqualifies him from being a witness."

In the same volume the same question is decided in the case of *Murphy vs. The People*, 2 Cowan, 815. I will only read a very brief extract from the opinion of Savage, Chief Judge, as follows:

"The Constitution of the United States was intended to regulate the general political interests of the United States and the mode of proceeding by its own officers, but never to regulate the internal policy of the individual States."

The other justices did not discuss this question, but they agreed clearly with the chief justice. The question came up again in the United States Supreme Court in the case of *Barron vs. Baltimore*, 7 Peters, 243, and Chief Justice Marshal, writing the opinion at page 247, and I will not stop to read it, expressly holds that none of these provisions apply or have any application to the State courts or State tribunals, but are purely a limitation upon the power of the Federal government. The question was again decided in the case of *Twitchell vs. The Commonwealth*, 7 Wells, 321, and in the case of *Thorington vs. Montgomery*, 147 U. S. 490.

And yet counsel for a justice of the Supreme Court called before this tribunal to answer for alleged misconduct have gravely argued to you here that if you remove Justice Hooker under the provisions of this section, you are violating the fifth amendment to the Constitution of the United States.

MR. MORELAND: What is that fifth amendment?

MR. COMAN: It provides that no person shall be held to

answer for a capital or otherwise infamous offense without first being presented by a grand jury.

MR. ELSBERG: They except impeachment in that provision?

MR. COMAN: Not in the Federal Constitution. But the State Constitution contains substantially the same provision, and both of them, of course, as every lawyer knows, are taken bodily and almost verbatim from the English Bill of Rights. And counsel has entered here into an elaborate argument, that although under another provision of the Constitution of the State you are expressly authorized to remove judges for cause, yet in some mysterious way a provision general in its terms and application operates to nullify that provision. I cannot understand the logic of such an argument. Every lawyer knows the rule that where two provisions of the same statute or provisions of two different statutes are in apparent conflict, that which provides for a particular subject will control over the one which by its terms is general. Not only that, but it seems to me that wise and eminent counsel, distinguished not only at the bar, but distinguished as leaders in the State, must have known that the State and Federal courts have both decided that these provisions have no application to a proceeding of this nature.

The case of the Matter of Smith, reported in 10 Wendell, is a famous case, and although the exact question which is here presented was decided in that case, and although the question has never been reviewed in this State, yet that decision has been regarded and has stood as authoritative during all these years, and it has never been questioned. The case is the Matter of Smith, 10 Wendell, 499. I desire to read some extracts from the opinion of Judge Sutherland:

"I see no constitutional objections to the law, 1 R. S. 452, under which the proceedings in this case were had; it undertakes to regulate by some general provisions, the practice of physic and surgery in this State; and with a view to the moral character, as well as the learning and skill of the members of this most

useful and responsible profession, it gives to the county medical societies the right to try any of their members against whom specific charges of gross ignorance or misconduct in his profession or of immoral conduct or habits may be brought.

“ It is contended, in the first place, that this law violates that provision of the bill of rights and of the Constitution of this State which declares that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. That it conflicts with those provisions of the Constitution of the United States and of this State which secure to the citizens the right of trial by jury, and prohibits the establishment of any new court, except such as shall proceed according to the course of the common law; and it is also contended that the law could not be properly applied to the offense charged in this case, inasmuch as it is alleged to have been committed in June, 1828, whereas the law did not go into operation until January, 1830. In the opinion of the court the answers given by the district attorney to these various objections are entirely satisfactory.

“ When the Constitution speaks of a person not being held to answer for a capital or otherwise infamous crime, unless on presentment or indictment, etc., it means to answer in a course of criminal proceedings—to answer criminaliter with a view to punishment under the criminal law, and has no reference whatever to those collateral or incidental proceedings which are disciplinary in their character, or have exclusive regard to some special character or relation which belongs to the individual. \* \* \*

“ The power conferred by this statute is similar in its character and consequences to that which is possessed by the courts of record of this State over counsellors, solicitors and attorneys. They may by statute be removed or suspended by the several courts to which they belong. The 24th section prescribes the mode of proceeding in such cases. They are strictly summary. A copy of the charges is to be delivered to the party, and he is to have an opportunity of being heard. But there is no grand jury to indict or petit jury to try, nor any of the usual concomitants

of a trial by jury; and yet I believe no constitutional objections were ever raised to this jurisdiction."

And in conclusion he says:

"Trial and acquittal of the defendant upon the indictment for producing the abortion was no bar to this proceeding; they are entirely distinct and independent proceedings, having different objects and results in view; the one having regard to the general welfare and criminal justice of the State; the other simply and exclusively to the respectability and character of the medical profession, and the consequences connected with or necessarily flowing from it. It is immaterial therefore in my judgment whether the offense mentioned in the charge was indictable or not, and whether the indictment was disposed of upon its merits or upon some matter of form."

In the United States Supreme Court, in a case to which counsel referred but from which he did not read, the same question was determined in language to which I invite your particular attention. The opinion is by Judge Bradley. The case is that of *Ex parte Wall*, reported in 107 U. S. Supreme Court Reports, at page 265. I read from the opinion of Judge Bradley, at page 288:

"The provisions of the Constitution, which declare that no person shall be held to answer for a capital or otherwise infamous crime unless upon a presentment or indictment of a grand jury; and that the trial of all crimes, except in cases of impeachment, shall be by jury, have no relation to the subject in hand. As held by the Supreme Court of Tennessee in *Fields vs. State*, and the same view is expressed in other cases, the constitutional privilege of trial by jury for crimes does not apply to prevent the courts from punishing its officers for contempt or for removing them in proper cases." Mark, gentlemen, please, this language: "Removal from office for an indictable offense is no bar to an indictment. The proceeding is, in its nature, civil, and collateral to any criminal prosecution by indictment. The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministrations of persons unfit to practice in them. Undoubtedly, the

power is one that ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney. But when such a case is shown to exist, the courts ought not to hesitate from sympathy with the individual, to protect themselves from scandal and contempt and the public from prejudice by removing grossly improper persons from participation in the administration of the laws. The power to do this is a rightful one; and, when exercised in proper cases, is no violation of any constitutional provision."

Now it has been said here by counsel that the removal of Justice Hooker from office involves punishment. I suppose that no person in his right mind would contend that that was not true. The punishment which will follow this removal, if it is made, will be of the severest character. But beyond that the punishment has no reference whatever to the punishment which is known to the criminal law and which is the result of a criminal prosecution.

A sufficient answer to all these contentions is that Judge Hooker is not being tried here for fraud or for conspiracy or for procuring an infamous judgment against the city of Dunkirk. The question which you are here to determine is, is Judge Hooker a morally fit person to hold this position? The fact that he has been involved in certain transactions have been put in evidence here before you merely as evidentiary facts leading up to the question as to whether he is or is not a morally fit person to hold this office.

It is not necessary that a judge should commit crime before he is removed from office. Even if you should determine that no crime has been committed by Justice Hooker, no felony, no misdemeanor, it would be still your duty to say upon this evidence whether he is or is not a fit person to sit upon the bench of one of the greatest courts in the world and to hold in his hands and custody the lives, the liberty and the property of the people of this great State.

The question of whether this is a trial or not has been argued

here by counsel. The learned Senator, the chairman of the judiciary committee, in his opinion, states that it is not a trial. If I had the time I think it would be easy to demonstrate to you that at least the Constitution did not contemplate a trial, but only a hearing and an opportunity to explain. Why the question as to whether the accused person should be entitled to a trial or not was expressly voted down in the Constitutional Convention of 1846. Mr. Morris, about whom much has been said, was there as a delegate, full of grievances over his removal from the office of reporter. He made various motions, among which was a motion that an accused judge should be given an opportunity in a hearing of this kind to produce and swear witnesses, but it was voted down by two to one. But the question is of no consequence in this case. I do not think for a minute that any person connected with this trial would ever have suggested that Judge Hooker ought not to have substantially a trial, if not technically one. I do not think there is any person within the sound of my voice who would suggest he ought not to have an opportunity to confront the witnesses against him and cross-examine them. But all these things have been observed. Judge Hooker has had his trial. He has been represented by counsel. You have listened to their argument. He has been confronted by the witnesses against him. He has had an opportunity to cross-examine them. He has had an opportunity to produce witnesses in his defense and an opportunity to take the stand and give his explanation of these charges.

Counsel has made a most vigorous, and it seems to me remarkable, attack on the wisdom of this section of the Constitution. He has made an argument here which if it means anything was an appeal to you to decide that a provision of the fundamental law of this State, which has been incorporated in it in substantially its present form for nearly a century, was unwise and un-American, and that you gentlemen, who are sworn to support this Constitution, ought in some way or manner to nullify it. This provision, gentlemen, was inserted in the English Constitution as long ago as 1781, because whether or not counsel have heard of the English Constitution, there is such a thing. Whole libraries of books



have been written about it. Countless speeches have been made about it. All Englishmen and most Americans believe that it is the source and foundation of our civil liberty, and there is very little in the law of this land which did not find its origin in that Constitution.

The purpose of this provision when originally introduced into the order of settlement was too full, first, to prevent the arbitrary removal of the judges by the crown and, second, to provide some reasonable restraint upon the judges so that they might not become too arbitrary.

This provision, in one form or another, is found in the Constitutions of forty-two States of the Union. It represents the combined wisdom of all the law-making power of all the English-speaking people, and yet we are seriously told that it is an unwise and un-American provision and ought never to have been inserted in our Constitution.

The counsel for Justice Hooker, in the discussion of this case and of the facts which have been established here, has stated to you that Judge Hooker was entitled to the benefit of every reasonable doubt. Now, I suppose that there is no doubt among lawyers that the rule which gives an accused person the benefit of the reasonable doubt is applicable only to defendants in a criminal trial, in a criminal court, and yet I am not inclined to question the right of Judge Hooker to the benefit of the reasonable doubt. It amounts to no more than what every gentleman in this presence would require, namely, that sufficient evidence should be produced here before you to satisfy your consciences upon any given question, and certainly, while counsel has spoken of appeals that will be and have been made to you, no appeals will be made to you, gentlemen, to remove Judge Hooker from this great office unless you are satisfied upon the evidence which has been produced here, unless your consciences are satisfied that he is an unfit person to hold that office.

This case, upon the facts, can not be argued piece-meal. Here are a half dozen or more transactions, each one involving a great deal of minutiae and detail, and the effect of this evidence is

not in any single transaction or any single letter which Judge Hooker may have written, but it is the combined weight and impressiveness of the whole mass taken together. Counsel has picked up and commented upon one particular item and he has said, "Why this is no evidence that Judge Hooker has committed a crime," and then gone to another and another with the same remark. And as thinking men, as lawyers, and as men of affairs, I know that this Legislature will not consider this case in any such piece-meal way as that.

Some of you gentlemen have sat in the Legislature for many years. Some of you have held other positions of power and of responsibility? Many of you are no doubt designed to even higher and greater duties, but in my humble judgment, gentlemen, whatever may be your future career you will never be confronted with a more serious question than that to which I now propose to call your attention and which has been treated with a degree of flippancy by counsel for Justice Hooker. I refer to this Wirtner judgment.

Upon the questions relating to this Wirtner judgment we have, first, the documents themselves. We have next the testimony of Stearns, Hooker, Warren, Farnham, Scannell, Nugent, Miss Saxton and Judge White. In other words, we have the oral testimony of every person who was in any way connected with this judgment or its procurement excepting only Wirtner and Larkins. Wirtner may reasonably be dismissed from consideration, because it is fair to assume that he was ably represented by his counsel, Larkins. And what is the character of this judgment? Why it is of such a damnable character that every person who ever had anything to do with it runs away from it and disowns it. No one is willing to accept responsibility for it. And when more than two years after its entry and I think perhaps three years, Judge White's attention was in some manner called to it, he immediately recognized its infamous character and took vigorous proceedings to have it set aside. By unanimous consent of every person who ever touched this document it was a crooked and fraudulent thing.

There is not quite the same degree of unanimity among the witnesses as to the methods by which it was procured, but the evidence upon this subject leaves us in little doubt that the methods were as deceitful and as reprehensible as the decree itself.

Ask yourselves, gentlemen who are lawyers, how could such a decree be possibly procured from any judge of any court of record in the State of New York except by deceit and concealment? Some judge had to be put to sleep.

Here was a taxpayer's action, brought upon a complaint which was obviously good. The action could have been maintained if it had been prosecuted in good faith. It was based upon allegations of waste and of no consideration. This strip of property, this easement which was being conveyed to Stearns and Hooker, was valuable property. The resolution provided that it was to be leased for an indefinite period of time for the nominal consideration of one dollar. In other words, for no consideration whatever. And the Constitution of this State prohibits cities from giving away the property of the municipality. So I say that obviously the complaint was good and the action could have been maintained.

Now counsel says that there is no criticism upon this answer and I was amazed to hear him say it. Why, the answer, gentlemen, is absurd upon its face. It sets up a fantastical equity in these defendants Hooker and Stearns, based upon conversations with individual members of the common council which took place upon the curb and when they were not in the discharge of their official duties or in session. No affirmative judgment was asked for either against the city of Dunkirk or against Wirtner or anybody else. The prayer for relief was the usual prayer that the complaint be dismissed with costs and for such other and further relief as may be just in the premises.

Counsel has said that they were entitled to an affirmative judgment against Wirtner, so that the judgment which they thus obtained might be established *res adjudicata*. I don't believe it, but I spend no time in arguing it, because it is not of the slightest

consequence what they were entitled to. If they were entitled to it they didn't get it, and they never sought it. What they got was something entirely and absolutely different from that.

SENATOR BRACKETT: But if they had taken the proper pleading wasn't there an equity existing in favor of the owners, Hooker and Stearns, by virtue of the passage of the ordinance over the mayor's veto?

MR. COMAN: Do you mean that some peculiar significance attached to the fact that it had been vetoed and then repassed.

SENATOR BRACKETT: Couldn't they thereupon, by virtue of that ordinance, maintain an action to restrain further a violation of their lease if they properly pleaded?

MR. COMAN: My belief is, sir, that even if a lease had been executed and delivered to Hooker and Stearns it would have been absolutely void.

SENATOR BRACKETT: As mere waste?

MR. COMAN: As mere waste and as giving away the property of the city of Dunkirk in violation of the provisions of the State Constitution.

But the vice goes much deeper than the failure to serve the answer on the city of Dunkirk. Suppose they had served the answer on the city of Dunkirk. It would have been no notice to the city of Dunkirk that a judgment was to be asked against it, because no affirmative relief was asked for them in the answer.

Now a great deal has been said here about Justice White's forgetfulness and all that. I have no manner of doubt that Justice White heard this preliminary argument, this argument to vacate the preliminary injunction—or I won't call it an argument, because Mr. Warner testifies absolutely that there was no argument. He says that he and Larkins went in before Judge White and Larkins stated his motion and Warren stated his objection, where-

upon Judge White denied the motion. Now Judge White forgot it. It made no impression upon him. No order was entered. Subsequently, in this very judgment which was procured from Judge White, that preliminary injunction was expressly vacated.

Now, gentlemen, why didn't Larkins argue that motion? My answer is, gentlemen, because he had been bought. I should have argued this proposition with the utmost confidence had Mr. Stanchfield never sent down to his room for that \$65 check, but after that check was received, and after Mr. Farnham had sworn that he took that check out and got the money on it and went back and paid it to Larkins, there was no manner of doubt in my mind or in yours but what Larkins was bought, and this whole matter was not only an imposition upon the court, but a fraudulent agreement between the parties to this action.

Why, Stearns testified that he never paid Larkins the money. And here was Larkins in court, under subpoena issued at the instance of Justice Hooker, sitting here and hearing this testimony, and Larkins isn't put on the stand to deny or explain; Stearns isn't called back to either deny or explain, and the only inference is that they could do neither if they were called back.

MR. CUNNINGHAM: Mr. Coman, wouldn't the amount of the costs that would be given to a plaintiff's attorney in an action of this sort that had proceeded the same amount that this case had—wouldn't the exact amount of the costs be \$65?

MR. COMAN: This I am not able to say, but the judgment in this case expressly provides that no costs shall be allowed to either party.

MR. CUNNINGHAM: Isn't it often the custom, even where a stipulation is entered into to that effect, that one of the attorneys shall receive costs in settlement of the action?

MR. COMAN: I presume that that was the arrangement in this case, sir, but why, why should Larkins be paid for entering into

an arrangement with Mr. Stearns by which this fraudulent judgment was to be entered against the city of Dunkirk?

Now what were the subsequent proceedings to the argument of this motion, or the hearing of this motion to continue the temporary injunction? Why, Stearns calls up Judge Hooker on the telephone and tells him that Larkins is ready to quit, and asks him to get some judge, and I think he mentioned Judge White's name, to hear the evidence in this case. Well, now, I want to submit to the consideration of the lawyers in this body that there never was any reason why any evidence should be given in this case if Larkins was ready to quit. A simple stipulation discontinuing the action would accomplish every possible purpose which could be accomplished by a judgment against Wirtner.

Certainly, Mr. President, no Senator here would contend that a fraudulent judgment taken by stipulation between the parties could be a bar to the future action of some other taxpayer.

MR. ELSBERG: Is Larkins subpoenaed, Mr. Coman?

MR. COMAN: Larkins was subpoenaed.

MR. ELSBERG: He didn't appear, though.

MR. COMAN: He was here in court when Mr. Farnham was testifying.

MR. ELSBERG: Had he given any testimony in any previous stage of the proceeding?

MR. COMAN: No, sir.

MR. ELSBERG: Before the judiciary committee or otherwise?

MR. COMAN: No, sir.

THE PRESIDENT: Does any gentleman ask a question?

MR. ELSBERG: I don't know, Mr. President, whether I come in the classification, but I did desire some light.

THE PRESIDENT: If any question is to be asked by any member of the joint session, he will please address the presiding officer. Counsel may proceed.

MR. COMAN: Now, Judge Hooker went to White and he says to him—and there is no contest over this and no dispute about it, and Judge Hooker expressly said upon the witness stand that he had no quarrel with Justice White over what he said to him there—he said to him that there was a case coming down from Dunkirk or from Chautauqua county in which I am interested; it won't take long to try it, and practically or in substance there will be no contest, and will you try it? And White said yes.

Now Judge Hooker must have known something about this case if he was able to tell the trial judge that there was no contest and that it wouldn't take long to try it. He must have known, indeed Stearns informed, so he swears, that the plaintiff had quit. Now, why was he looking for a judge to try that kind of a case?

And then follows the trial. Counsel appeared before Judge White with assurances that there is no contest between these parties, that everything has been agreed upon, and what course could have been taken that would have so completely lulled to sleep a justice of the Supreme Court as the course taken by Judge Hooker and by Stearns and Larkins in unison? First the judge, a brother judge, goes to him and tells him that here is a case that is coming down for trial, and there is no contest; it won't take long to try it, and we want you to hear it. Then counsel came in with the same assurance and Judge White did exactly what any busy judge would have done under like circumstances, he said to them, go before my stenographer, I will swear the witnesses, give your evidence, pay no attention to it whatever. If he had heard a half dozen words of that evidence no power on earth could have ever persuaded him to sign those findings of fact and those conclusions of law. And then after the evidence has been given the findings are handed up to him and he signs them without a question or without a demur. And notwithstanding what anybody may insinuate about it, I believe that it

was a perfectly justifiable thing for him to do under the peculiar circumstances of that case, and I believe that Justice White left the witness stand here justified as to his conduct in that whole matter. Not that it makes the slightest difference. It would be only worse for Judge Hooker if Judge White were also engaged in a desperate attempt of this kind. But truth compels me to say that I believe Justice White did no wrong.

Now, what does White do? Why, when the report of the Post-office Department comes out it occurs to him that at some time or other he has signed a judgment which in some way related to the Dunkirk postoffice, and he proceeds to investigate it, and the most natural thing in the world, he writes to his friend the district attorney down at Mayville and asks him to go and get a copy of that judgment and report to him upon it, which he does very fully, and the report is in evidence here and you may read it, and there isn't a word in the report which is the subject of criticism or which isn't absolutely well founded. Then he goes to Arthur Wade. Mr. Wade, as he knew, was counsel for Justice Hooker in the investigation before the State Bar Association Committee, and it seemed to him, I take it, an eminently proper thing that instead of bothering Judge Hooker about this matter he should speak to his counsel about it, and he did so. And in May, gentlemen, in May, Mr. Wade swears that he called Judge Hooker up on the telephone and told him that Judge White had this judgment on his conscience and he wanted it set aside. But not until the second day of November did Judge White succeed in getting Judge Hooker to sign that stipulation, and Judge Hooker has gone upon the stand here and told you not only that he didn't know anything about that judgment, but that he never tried to ascertain anything about it, even after an associate judge upon the bench, whom he had requested to try the case, had come to him and said, here, I think this judgment is wrong and ought to be set aside. He not only didn't consent to setting it aside, but according to his own sworn testimony he never even tried to find out whether there was any wrong



about it, or what was wrong about it. Now, that is most remarkable conduct.

One Senator here asked my associate when he was arguing this case, if in order to find that certain charges were true he must draw inferences from the facts and disregard the sworn denials of the witnesses. Certainly, if it is necessary, and if the circumstances and the facts establish in your mind the existence of the fact which is sought to be proven.

And I ask you, gentlemen, what possible reason could there be for Judge Hooker's neglecting to go and get that judgment and find out what was wrong about it, except the fact that he didn't need to. The only possible explanation of it. Why, what would any member of this joint assembly have done under like circumstances? You would have gone the next day to Mayville to investigate that judgment if you had to go on foot.

And as against all these concrete facts, as against this mass of circumstances all pointing in a single direction, you are asked to say that they are all misleading, that the probable things didn't happen and didn't take place simply because one man goes upon the witness stand and says that I deny that I have knowledge of the contents of this judgment or of its character.

Counsel has said that the judgment is void, and has made light of it and talked in a flippant manner about it, as though it were a very proper thing to ask a justice of the Supreme Court to sign a void judgment, and as though it were a very proper thing for a judge of the Supreme Court to sign a void judgment. Why, suppose that some morning you should wake up to find that a judgment had been entered dispossessing you of your house and lot, you examine the judgment roll and find that there is no proof of service upon you, you go to the judge who granted the judgment and he examines it and finds that there is no proof of service, but recollects that he signed it upon the recommendation of a prominent lawyer that it was all right, and I should judge from the argument of counsel that they would have you believe that that sort of thing is a joke, not only that lawyers may make a football and a plaything of the process

of this great court, but that the judges of that court themselves may do it, and it is a light and idle matter.

Now, gentlemen, I want to say just a word about the evidence of the six eminent justices of the Supreme Court, who have been produced here and given testimony in this case. I have no criticism to offer upon any of those judges or their conduct. It was entirely unnecessary for the counsel to give them so long a certificate of character as he did, because we all recognized their character and their worth and the weight of what they say. They testified upon two points, one of which is as to the judicial character and conduct of Justice Hooker; with that we have no concern. Nobody has charged Judge Hooker with improper conduct upon the bench; nobody has charged him with lack of ability. My only information upon that point is what I observed when he was upon the witness stand. I should judge that he was a man of very considerable ability and of great resources. But, gentlemen, back of all this question is the question of integrity, one of the fundamental requirements in a judge of this great court, and if he is lacking in that essential, then the abler man and more resourceful man he is, the more dangerous man he is. They also testify to the good character and reputation of Judge Hooker before these charges were given out. Well, what weight or effect is to be given to that? Every man's character is good, every man's reputation is good until something is found out about it and there are some charges made against him. Why, there is not a bank record in the world who could not produce the same sort of testimony and from the same class of men; and the bigger the record and the higher up he was, the better men he could produce. You have got to have reputation before you can get into such position. There is not a trustee of the Equitable Insurance Company who could not produce the testimony of men of the very highest standard in the world to their good reputation and character before these charges came up in reference to that company. I remember a few years ago the case of a county treasurer in a county adjoining this, who was a defaulter. There went upon the stand in his defense two justices of the Supreme

Court, who both testified to his good character and reputation; and one of them in response to the question, "What was his character and reputation?" answered, "The best I ever knew." And yet the man was a defaulter.

I want to say just a word in passing in answer to the question of the Senator from the Fourteenth, which he asked of my associate, when he was arguing this case. The Senator asked him, and I think that my associate as well as myself, misapprehended the point of his question entirely; the question which he intended to ask was this: "Are we asked here by the prosecution to draw inferences from these conceded facts in direct opposition to the oral testimony of every one of these witnesses who have been sworn, Ball, Maurice Hooker, Katherine Clark, O'Neil, Caldwell and the others?" Now that is a question which cannot be answered categorically. Every one of these witnesses swore that they had no arrangement with Judge Hooker, no agreement with him, by which they were not to perform this work. Very well, I don't suppose those same expected they did have any such agreement. That is not the way such things are done. Every one of them testified that he never told Judge Hooker that he was not performing the work. Did anybody expect they would tell him that? Did anybody expect these people would go to Judge Hooker, these people who were drawing these salaries, and say to him, "Judge, I am drawing the salary of this job you got for me, but I am not doing any work?" Now these denials amount to just that, they are not denials in any possible sense that Judge Hooker had knowledge upon that subject. They are simply specific denials that they had any agreement with them or that they ever told him that they were not performing the services.

MR. ELSBERG: Mr. President, I would like to ask Judge Coman, if I may.

THE PRESIDENT: If counsel has no objection you may ask the question.

MR. COMAN: No.

MR. ELSBERG: I don't think I made myself entirely clear in the question I put before. What I asked was this, whether to draw the inference that Mr. Stevens asked us to draw from the facts, as he grouped them and stated them, it was not necessary that we should absolutely disregard the sworn testimony of the witnesses in the proceeding?

MR. COMAN: Well, I can make no further answer to that question than I have already made.

MR. ELSBERG: Including the respondent?

MR. COMAN: I think that the answer which I have already made answers the Senator's question as fully as I am able to do. Here are certain people who go upon the stand and testify to certain facts. Now they testify to certain other things which are evidently in conflict with the facts with which they have testified and which they have been forced to admit. Now, of course, every lawyer knows that it is the duty of the jury—and you are the jury in this case—to pass upon these facts, to use your reason, your intelligence, your observation, and your experience in the ordinary affairs of life, in determining whether a certain thing is true or false; and it is not simply because a witness says it is true that you must believe him.

Something has been said here about the independence of the judiciary, the independence of the judiciary is invaded. What is the independence of the judiciary? Is it the right to commit crime? Is it the right to defraud the government of the United States? Is it a right to enter fraudulent and infamous judgments against the municipalities of this State? Is it the right to conspire? Is there a judge in the State of New York who wishes that sort of independence? If so, then this Legislature has further duties to perform. There is no reason in the world why judges should not be subject to some respect, why they should not be accountable to somebody for their conduct, both on and off the bench. All other persons are. Judges are only human beings, and it is inevitable in the course of time that bad men shall get

upon the bench, as bad men get into every profession and every calling in life. And when that badness has been made apparent there must be some power or authority to remove them from the bench and to protect the courts and the people. It is said this will be a dangerous precedent, if Judge Hooker is removed. What is a precedent? Why, a precedent is defined to be a preceding action which may be used as an example or pattern in succeeding cases. The removal of a bad judge is not a precedent for the removal of a good one; the removal of a judge for sufficient cause is not a precedent for the removal of another judge for insufficient cause; the removal of a judge by an honorable and high-minded Legislature is not a precedent for the removal of another judge at some future time by some Legislature of Socialists, as has been suggested here. Something has been said about the Morris case as a precedent, and we have at least been asked to infer that Mr. Morris was removed from the office of recorder upon insufficient causes. And I want to say that Mr. Morris was not removed under this section of the Constitution or under section 13 of article 1, which was its predecessor, but was removed under section 6 of article 5, which provides that judges of the county courts and recorders of cities shall hold their offices for five years, but may be removed by the Senate on recommendation of the Governor for causes stated in such recommendation. Now we don't know, and so far as I know, nobody knows at this day why Mr. Morris was removed. Perhaps he was unjustly removed. At all events, the people of New York city thought so, and they immediately proceeded to elect him to a greater and a higher office, proving the old saying of some great statesman that every public man is greatly benefited when an outrage is committed against him.

We have had the Loring case pointed out to us as a bad precedent, and you have been asked to sit in judgment here upon a Legislature of a sister State and say that they did an unjust thing in removing Judge Loring. In view of the circumstances in that case, in view of the circumstances existing at that time, I don't believe that any man here is prepared to say that that was an

unjust removal. The people of Massachusetts at that time believed at that time as firmly as they believed in the existence of their God that human slavery was the soul of all villainy. They believed that no citizen of Massachusetts had a moral right to lend his support or aid to the institution in any way; and they believed that a man who would do it ought to be removed from office. They believed in a higher law than the Constitution, and so they removed him. And it is not for you and it is not for me at this late day to say that they were not justified in so doing.

If, Mr. President and gentlemen, upon the evidence in this case you find and satisfy your consciences that Judge Hooker is a man not morally fit to sit upon the bench of the Supreme Court, his removal from that office will be a precedent pregnant with good for this and future generations.

Mr. President and gentlemen, I thank you.

THE PRESIDENT: Have counsel anything further? If not, in accordance with the rule——

MR. ROGERS: When the statement of charges or of causes was adopted in the Assembly, it was distinctly stated by the gentleman from Madison, the honorable chairman of the judiciary committee, that in adopting such causes and in directing their service upon Judge Hooker, the Assembly was not committing itself to any findings of fact in relation thereto, but it was adopting a statement of causes which were mere allegations at that time, subject to proof and substantiation by evidence in the course of this proceeding. I assume that the same understanding prevailed in the Senate.

We are now face to face with a situation where in some way or another it must be determined whether any or all, or if not all what portion, of the charges have been substantiated by the proofs offered. The rule which governs our proceedings from now on, it occurs to me, has not anticipated fully the situation as it now presents itself. Rule 13 states that after the argument of counsel the joint session shall dissolve. That the House in which the pro-

ceeding originated, or in other words the Assembly, shall thereupon go into secret session and after such debate as may be had thereon shall proceed to vote. Upon such vote the question shall be by ayes and nays upon a resolution in substantially the form following:

"Resolved (if the Senate concurs) that Warren B. Hooker be and he is hereby removed from the office of justice of the Supreme Court for cause." Then in parenthesis the words "stating it." In other words this resolution provides that the Assembly shall determine the facts and allegations which have been proven and it shall be inserted in the resolution for removal. Should the Assembly see fit to strike out one or more or all of the causes which have been alleged, the time of the Senate would seem to have been wasted in compelling it to sit here and listening to the arguments and proofs which have been presented.

So it seems to me that it is right and proper and more in accordance with the spirit of the Constitution that the joint session, having heard the proofs and the arguments, should determine the statement of causes which are to go in the final resolution and when the joint session shall have thus determined that the final resolution as promulgated shall then go to the Assembly for its action. Should it pass by the constitutional majority, then go to the Senate for its action. To that end I desire to offer this amendment to Rule 12.

SENATOR BRACKETT: Mr. President, I rise to a point of order.

THE PRESIDENT: The Senator from the Twenty-eighth will state his point of order.

SENATOR BRACKETT: That any amendment to the rules of the joint assembly must be adopted by a concurrent resolution of the two Houses and not by the joint assembly itself.

THE PRESIDENT: The point of order is not well taken. The gentleman from Broome, Mr. Rogers, offers the following amend-

ment to Rule 12 of the Rules of Practice and Procedure, which the Clerk will read.

THE CLERK: Amend Rule 12 by inserting after the word "Resolved" that Rule 12 of the Rules of Practice and Procedure for this joint session be and the same hereby is amended by inserting after the words "The joint session shall" and before the word "Resolved" the following, "determine the statement of cause to be inserted in the final resolution for removal and shall then."

MR. ROGERS: As amended Rule 12 will read thus: "The joint session shall determine the statement of cause to be inserted in the final resolution for removal and shall then dissolve."

MR. CAHN: I desire to call the attention of the House to the language used in article 6, section 11 of the Constitution and followed in this proceeding. The cause alleged is not as I take it the gentleman from Broome intends to infer the various allegations as to the postoffice and as to Ball and as to the other charges. The cause alleged, as appears at page 45 of the journal, is another matter. The particular instances are the specifications and the causes alleged, as I understand it, must be those upon which the learned justice has been tried. No other cause can now at this stage be inserted in the rules if this Assembly in joint session intend to do anything which is valid at all. I would respectfully suggest that the cause alleged, if it be inserted at all, be the entire statement of the cause alleged for removal as appears upon page 45 of the journal and not some particular specification in that cause.

SENATOR RAINES: I think we ought to be able to come to a conclusion upon this question without much trouble. By adopting document No. 61, which reads: "In Assembly July 11, 1905. Charges, Answer and Rules of Practice and Procedure." The first part of the document reads in this way: "Statement of the cause alleged for removal."



“That the said Warren B. Hooker, while a representative in Congress, prior to the 10th day of November, 1898, and while a Justice of the Supreme Court of the State of New York since said 10th day of November, 1898, has been wilfully guilty of corrupt, unlawful and immoral acts which have tended to bring and have brought the said office of justice of the Supreme Court and the administration of justice into contempt, and which show a personal unfitness on the part of said Warren B. Hooker to hold and occupy the office of justice of the Supreme Court, which acts and conduct are set forth and described in the following allegations and specifications.”

Then follow the allegations and specifications. It seems to me there is no question whatever but that the cause upon which the Assembly must vote is the cause on which this investigation has been had as alleged in the proceedings of the Assembly. And if that is so there can be no occasion whatever for the Legislature in joint session to pass in the first place upon the cause to be alleged by the Assembly in their resolution. It may possibly be in the power of the Assembly to provide, but it strikes me that if the Assembly alleges just exactly that, that is sufficient to pass upon, that they may if they choose just include all the charges and specifications and vote separately if they choose. That is a proceeding for the Assembly to adopt for themselves.

MR. FISH: When these rules were adopted originally they provided for a vote separately upon each allegation stated in this cause alleged for removal. On the hearing before the sub-committee of the two judiciary committees the counsel for Justice Hooker appeared and objected to a vote being taken in that form, and the sub-committee changed the rules as drafted into the form in which they now stand. It seems to me that this joint session has now performed its duties so far as the joint session is concerned. That now the matter is first in the hands of the Assembly, and that when we decide what form of statement of the cause for removal shall be acted upon by the Assembly, then it is time enough for the Senate to take part in the matter. If we see fit to put into

this statement of cause all the allegations and all the specifications which are contained in this statement of the cause alleged for removal, it may be competent, perhaps, for the Assembly to amend that statement of cause. If the Assembly adopts that statement of cause by a two-thirds vote and sends it over to the Senate, it may be competent for the Senate to amend it and send it back to us. Then it might be necessary to have a conference committee to determine what the final form of the statement of the cause for removal should be. If the Assembly should not pass any resolution or any statement of cause by a two-thirds vote, then the Senate has nothing more to do unless they see fit to take the matter up themselves. I hope this motion will not prevail.

MR. CAHN: I would like to ask the gentleman from Madison a question before he seats himself.

THE PRESIDENT: Will the gentleman from Madison answer a question?

MR. FISH: Certainly.

MR. CAHN: Section 11 of article 6 of the Constitution is as follows: "But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged and shall have had an opportunity to be heard." So that the statement of the cause alleged must have been entered upon the journal prior to the time he had to appear to be heard. I would like to ask the gentleman from Madison whether he believes that at this stage of the proceeding we can in any way, by amendment, by addition, by striking out in any way, change the cause alleged for the removal of Warren B. Hooker, and which was served upon the judge. ●

MR. FISH: Mr. President, that is a question which I would not want to answer off-hand without some examination. The

statement of cause alleged for removal has been entered upon the journal. It is there as part of the record.

MR. ROGERS: Mr. President, I offered the resolution to avoid the delay incident to a course of procedure such as the gentleman from Madison has outlined might occur. I think that the members of both Houses, appreciating the responsibility which rests upon them, are ready to go with as much expedition as possible to the final determination of this matter. It did not occur to me that it was an economy of time for the Assembly to act upon a resolution, and perchance adopt it, and send it to the Senate and there have it perchance amended, and have the delay necessary for a conference committee to get it in final form. My own impression is that since we are here, the triers of a question of fact, that we might determine that any one of the specific questions of fact alleged had not been proven and we might remove for less. Concededly, we could not insert any new cause. But it must be that we are to determine in some way, one by one, specifically, whether these allegations have or have not been established. That is why the statement of cause was left blank apparently in the resolution formulated by the committee and adopted. Now that resolution indicates that something must be inserted. If the contention of the gentleman from New York, Mr. Cahn, were correct, naturally there should have been then inserted some statement of cause, nothing more, nothing less than was served upon Mr. Justice Hooker. For my part I,—

MR. FISH: Mr. President, will the gentleman yield?

THE PRESIDENT: Will the gentleman give way for a question?

MR. ROGERS: Certainly.

MR. FISH: Where do you find any constitutional or legal authority for this joint assembly acting upon this question?

MR. ROGERS: Why, Mr. President, I find it in the decisions of the United States Supreme Court which say that when a constitutional power is given to any body or to any officer that there is given with it every power incident to carrying that out.

MR. FISH: Mr. President.

THE PRESIDENT: Will the gentleman give way to another question?

MR. ROGERS: Certainly.

MR. FISH: Will the gentleman contend that any such provision abrogates a specific provision of the Constitution of the State or of the United States? Isn't this a specific provision in this State that they shall act concurrently and not jointly?

MR. ROGERS: I do not concede the Constitution to be what the gentleman contends, if I understand it. I do know that the Constitution says that there shall be an opportunity to be heard; it does not say there shall be opportunities, one before one body and one before another; but it does say that there shall be a single opportunity, and if I am able to read it aright, I believe that when it says that it gives to the Legislature the way to provide the opportunity to be heard, which this Legislature has done by providing a joint session, which every court in the land has formulated as being strictly in the purview of the Constitution.

MR. RAINES: I ask the gentleman from Broome whether he desires to press for a vote on his proposition?

MR. ROGERS: I have no disposition to withdraw, I do not care whether every member differs with me or not.

MR. RAINES: With that state of affairs I invite the provisions of Rule 13.

MR. F. C. WOOD: I would like to ask the Senator from the Forty-second if it is his desire to have us understand that the only cause to be entered on the journals of the two Houses, provided the resolution is adopted is the cause he read and no other?

MR. RAINES: I said specifically you might include the charges and specifications as the cause. Let me suggest without in any way desiring to interfere with the prerogative of the Legislature when they come to it and vote and take this up together, the question will be on each is it sufficiently proven or not, and then is the charge proven, and then finally on the general proposition which is in the charges which I read.

MR. F. C. WOOD: I would like to ask if one claim in the allegation were proven to be true if the cause then entered on the journal would not include the statement of the cause in addition which arose out of the wrongful act in doing so or so?

MR. RAINES: I think any charges or specification might be passed on as specified if the Legislature so determines.

MR. F. C. WOOD: Isn't it a fact, that being the case, that this alleged cause must be changed before the concurrent resolution is adopted?

MR. RAINES: If you don't find one you may find another or finding that you may find the main proposition.

MR. F. C. WOOD: Isn't it necessary to change in the wording the statement of the cause alleged as printed in this particular document, provided any of the allegations are sustained?

MR. RAINES: I do not see that it is. If the gentleman from Broome presses his motion, I ask that under Rule 12 a separate vote be taken.

THE PRESIDENT: The question is upon the adoption of the resolution offered by Mr. Rogers.

MR. BRACKETT: I am impressed with the argument of the gentleman that no officer shall be removed except for cause, and

the cause shall be entered, and unless he shall have been served with a statement of the cause alleged must be served on the remonstrant and acted on in the form in which it was served. I think that some confusion would arise as to what the Constitution and specifications of cause the final vote arrested, and the cause which is stated at the beginning of the charges that were served on the remonstrant the vote on that cause may be sustained by sustaining any of those specifications stated for the cause, and, that being the case, I suspect that a proper method of procedure when the Assembly shall come together in single session will be to vote separately on these specifications, No. 1, sustained; is No. 2 sustained, etc., through the specifications. If it should be decided that none of those specifications are sustained, then the vote on the final putting of the resolution as to whether there has been cause shown will be indicative. If it should be found that the vote was in favor of any of the specifications, then the vote must be on the cause stated at the beginning and the vote on that must depend on whether any of the specifications have been found to have been sustained and warrant the removal. Under those circumstances, I hope the resolution of the gentleman from Broome may be withdrawn, or, if not, voted down.

MR. ROGERS: Mr. President, will the Senator yield for a question?

THE PRESIDENT: Will the Senator give way?

SENATOR BRACKETT: Yes.

MR. ROGERS: If the Senator agrees with the gentleman from New York, Mr. Cahn, as I understand him, we must insert in the final resolution the statement of cause which was served upon Mr. Justice Hooker, which includes not merely the preliminary statement but likewise the five specifications. Now then, I desire to ask the Senator if any member of either of the two-houses should feel that one of the specifications had not been established, but

that others had been, would he have the right to and how would he express himself in having that right to declare that the one had not been established and the others had?

SENATOR BRACKETT: Mr. President, in answer to that question my judgment is that on the final vote for cause, the resolution should contain the language "that the said Warren B. Hooker, while a representative in Congress, prior to the 10th day of November, 1898, and while a justice of the Supreme Court of the State of New York, since said 10th day of November, 1898, has been wilfully guilty of corrupt, unlawful and immoral acts which have tended to bring and have brought the said office of justice of the Supreme Court and the administration of justice into contempt, and which show a personal unfitness on the part of said Warren B. Hooker to hold and occupy the office of justice of the Supreme Court."

That is the cause I think. All that follows must be considered as specifications tending to amplify and elucidate the general statement of cause.

MR. ROGERS: I agree with the Senator precisely that the two Houses might formulate the specifications, if you please, and I am willing to have my resolution changed so that word "cause" shall read "specification" if that suits better. It was thought the two Houses might jointly formulate the specification and thus do it more expeditiously than otherwise that I offered the resolution.

THE PRESIDENT: The question is upon the adoption of the resolution.

MR. TOMPKINS: Mr. President.

THE PRESIDENT: The gentleman from New York.

MR. TOMPKINS: May we hear the resolution?

THE PRESIDENT: The clerk will read the resolution again.

(The clerk read the same.)

THE PRESIDENT: Those members of the Senate who are in favor of the adoption of the resolution will rise and stand until they are counted. Those opposed will rise.

THE PRESIDENT: The resolution is lost.

Pursuant to the provision of Rule 12, of the Rules of Practice and Procedure heretofore adopted, I declare this joint assembly now dissolved.

At the hour of 6 o'clock and fifteen minutes the President and Senate returned to the Senate Chamber.

Mr. Raines moved to adjourn until 10 o'clock to-morrow morning.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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THURSDAY, JULY 20, 1905.

The Senate met pursuant to adjournment.

Prayer by Rev. J. M. Procter.

The journal of yesterday was read and approved.

Mr. Malby moved that the Senate stand in recess for half an hour.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

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TEN O'CLOCK AND FORTY-FIVE MINUTES.

The Senate again met.

Mr. Raines moved that the Senate stand in recess.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.



## TWELVE O'CLOCK AND FORTY-FIVE MINUTES.

The Senate again met.

A message from the Assembly was received and read, in the words following:

IN ASSEMBLY, *July 20, 1905.*

*To the President of the Senate:*

By direction of the Speaker, I hereby inform the Senate that the concurrent resolution providing for the removal of Warren B. Hooker from the office of justice of the Supreme Court, for cause, has failed to receive the vote of two-thirds of all the members elected to the Assembly.

By order of the Assembly,

A. E. BAXTER,  
*Clerk.*

The Assembly sent for concurrence a resolution, in the words following:

Resolved (if the Senate concur), That the official stenographer of the Assembly and the official stenographer of the Senate be each allowed and paid additional compensation at the rate of \$25 per day, but not exceeding in amount the sum of \$200 each, for services rendered in taking and transcribing testimony during the extraordinary session of the Legislature.

Said resolution was referred to the committee on finance.

A message from the Governor was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, *July 20, 1905.*

*To the Legislature:*

I recommend for your consideration at this extraordinary session of the Legislature an appropriation sufficient to pay in full the expenses thereof.

FRANK W. HIGGINS.

Mr. Malby introduced a bill entitled "An act making an appropriation for the expenses of the extraordinary session of the Legis-

lature, called by proclamation of the Governor, to convene on June 21, 1905" (Int. No. 1), which was read the first time, and by unanimous consent was also read the second time.

On motion of Mr. Malby, and by unanimous consent, the rules were suspended and said bill ordered to a third reading and referred to the committee on finance, retaining its place on the order of third reading.

A message from the Governor was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,

ALBANY, *July 20, 1905.*

*To the Legislature:*

I was led to convene the Legislature in this extraordinary session by reason of an extraordinary condition existing at the close of the regular session. A justice of the Supreme Court stood accused by the judiciary committee of the Assembly of unfitness to remain on the bench. No other provision could be made for the speedy constitutional determination of the question whether cause existed for his removal from office. The right of the people to an untainted judiciary and the right of the accused judge to be heard in his defense, alike imposed upon me the imperative duty of summoning you to dispose of the case.

The Constitution provides that the Governor "shall have power to convene the Legislature. \* \* \* on extraordinary occasions" and that "at extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration." Doubtless the Governor is the sole judge of what constitutes the extraordinary occasion which shall justify him in convening the Legislature in extraordinary session, and doubtless he may present any subject whatever to such a session, when convened, for its consideration. But the clear distinction made by the Constitution between the functions of the Legislature in regular and in extraordinary session plainly indicates that an extraordinary session should be convened only in response to some emergent public demand and that such subjects alone should be recommended for consideration at such a session as are of general pressing and unusual importance. A matter so solemn and serious in its nature as a proceeding for the removal from office of a justice of the Supreme Court should not be interrupted

or complicated by the interjection therein of ordinary legislative business. Under our system of annual sessions of the Legislature, emergencies that call for consideration at an extraordinary session must necessarily be rare. I have accordingly refrained from recommending any subject of legislation for your consideration pending the hearing in Justice Hooker's case, and I now refrain from submitting to you not only important matters which were before you at your regular session, but also new matters of minor and local importance.

One subject, in my judgment, should be submitted to you for your consideration. The unfortunate scandals recently made public by the internal dissensions in the Equitable Life Assurance Society and by the comprehensive investigation of its affairs by the Superintendent of Insurance have, not without just cause, aroused a feeling of intense alarm in the breasts of the thousands of our citizens who have invested their money in policies of life insurance and of the thousands of nonresidents who have been taught to respect the New York companies as safe and secure. While the business of life insurance, as at present conducted, is subject to State supervision and regulation for the purpose of guaranteeing solvency and the fulfillment of contracts on the part of the companies, it is evident that evils and abuses may exist under our law, that earnings which should be credited to the policyholders may be diverted to other purposes, that expenses of operation may be extravagant and wasteful, that unwise investments may be legally made and that trustees may deal indirectly with the trust funds for their personal advantage. That such a condition of affairs can exist reflects discredit upon the State.

Legislation is no panacea for the ills of the body politic that arise from a disordered moral sense. The multiplication of penal statutes does not diminish the spirit of lawlessness, but is rather a symptom of its growth. But it is apparent that our insurance law is in some particulars obsolescent and inadequate, and that the management of the funds of these great companies is not sufficiently safeguarded.

The State owes a duty to policyholders and beneficiaries beyond that of comparing assets with liabilities and permitting the companies to justify their existence by the exhibition of a satisfactory balance sheet and the prompt payment of losses. Investments must be restricted, salaries must be limited to amounts bearing a closer relation to the commercial value of the services rendered, trustees must be held to a stricter accountability, and the policy-

holders must be given a more effective share in the government of the companies. It may well be that the harsh and arbitrary remedy of dissolution and receivership should be made not only a penalty for insolvency, but also a summary check upon a solvent company when it becomes irredeemably the plaything of lawless greed. The State cannot permit the subjects of its supervision to exist as licensed prodigals of other people's money without becoming an accomplice to the offense.

We cannot judge all life insurance companies by the sins of one. We should not destroy the edifice to rid ourselves of the vermin that infest it, nor should we kill the patient to stop the progress of the disease. A revision of our insurance law is necessary, but it should be made with calmness, deliberation and intelligence and after careful study and investigation.

The Superintendent of Insurance is authorized by law to "examine under oath the officers and agents of any such corporation and its books with reference to its business." Within the scope of his authority and the limits of his time, the Superintendent has performed his duty with impartial thoroughness. Although he has informed me that, by reason of the statutory limitations upon his inquisitorial powers, and by reason of the magnitude of the task imposed upon him, he would welcome the aid of a legislative investigating committee, I have been of the opinion that he, with his staff of experts and with the authority vested in him to conduct investigations at the expense of the companies examined, was well qualified to collect all necessary evidence upon which to base new legislation, and that no other investigation, outside the courts of justice, was necessary or desirable, pending the investigation now being conducted by him.

It is, however, of the highest importance that a revision of the Insurance Law should be enacted as promptly as is consistent with a thorough knowledge of the subject. It is proper and necessary that the Legislature should determine for itself how the information upon which to base a revision may best be obtained. If in its judgment an investigation conducted by its own members is calculated to produce the most satisfactory results, such an investigation cannot too speedily be begun.

In order that you may be free to consider and act upon the subject at this session, I, therefore, pursuant to the Constitution, do hereby recommend for your consideration the question of the appointment of a joint committee of the Senate and Assembly,

with the usual powers of such committee, to investigate after your adjournment the operations of life insurance companies doing business in the State, for the purpose of preparing and recommending to the next regular session of the Legislature such proposed legislation as may be adequate and proper to restore public confidence and to compel life insurance companies to conduct a safe, honest and open business for the benefit of their policyholders.

FRANK W. HIGGINS.

Mr. Armstrong offered the following:

Whereas, It appears from the preliminary report of the State Superintendent of Insurance on the Equitable Life Assurance Society of New York that the interests of policyholders and their beneficiaries in life insurance companies doing business in the State of New York are not properly safeguarded by existing laws and that a revision of the insurance laws of the State should be undertaken; and

Whereas, The inquisitorial powers of the Superintendent of Insurance are limited to the examination of the officers and agents of the companies and their books with reference to their business and with a view to their solvency chiefly, and it is expedient that as a basis for legislation the operations of such life insurance companies should be investigated as fully and as promptly as may be;

Resolved (if the Assembly concur), That a joint committee be appointed, consisting of three members of the Senate and five members of the Assembly, which committee shall, after the adjournment of the extraordinary session, proceed to investigate and examine into the business and affairs of life insurance companies doing business in the State of New York, with reference to the investments of said companies, the relation of the officers thereof to such investments, the relation of such companies to subsidiary corporations, the government and control of said companies, the contractual relations of said companies to their policyholders, the cost of life insurance, the expenses of said companies and any other phase of the life insurance business deemed by the committee to be proper, for the purpose of drafting and reporting to the next session of the Legislature such a revision of the laws regulating and relating to life insurance in this State as said committee may deem proper; further

Resolved, That the said committee be, and it hereby is authorized and empowered to acquire and enforce the attendance of witnesses, and the production of books and papers, to administer oaths, and to employ counsel, stenographers, clerks and such other employees as may be necessary for the purposes of the investigation. And a sum not exceeding \$25,000 is hereby appropriated out of any moneys in the treasury not otherwise appropriated for the purposes of said committee.

Said resolution was referred to the committee on finance.

Mr. Raines moved that the Senate stand in recess until 2 o'clock p. m.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

---

## TWO O'CLOCK P. M.

The Senate again met.

Mr. Malby, from the committee on finance, to which was referred the bill introduced by Mr. Malby, Int. No. 1, entitled "An act making an appropriation for the expenses of the extraordinary session of the Legislature, called by proclamation of the Governor to convene on June 21, 1905" (No. 1), reported in favor of the passage of the same with some amendments, which report was agreed to and said bill restored to its place on the order of third reading.

A message from the Governor was received and read, in the words following:

### STATE OF NEW YORK—EXECUTIVE CHAMBER.

*To the Legislature:*

It appearing to my satisfaction that the public interest requires it; ●

Therefore, in accordance with the provisions of section 15 of article 3 of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of the Senate bill (Int. No. 1), entitled "An

act making an appropriation for the expenses of the extraordinary expenses of the Legislature called by proclamation of the Governor to convene on June 21, 1905."

Given under my hand and the privy seal of the State at the Capitol in the city of Albany this twentieth day

[L. s.] of July, in the year of our Lord one thousand nine hundred and five.

FRANK W. HIGGINS.

By the Governor:

FRANK E. PERLEY,  
*Secretary to the Governor.*

Said bill was read the third time.

The President put the question whether the Senate would agree to the final passage of said bill, the necessity for the immediate passage of the same having been certified by the Governor, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof, and three-fifths being present, as follows:

FOR THE AFFIRMATIVE.

Allds	Cooper	Foley	Keenan	Prime
Ambler	Cordts	Frawley	Kehoe	Raines
Armstrong	Cullen	Gardner	Lewis	Riordan
Brackett	Davis	Gates	L'Hommedieu	Saxe
Brown	Dooling	Goodsell	Malby	Stevens
Burr	Drescher	Grady	Marks	Tully
Carpenter	Elsberg	Hasenflug	Martin	Warnick
Cassidy	Fancher	Hawkins	McEwan	White
Cobb	Fechter	Hinman	Page	Wilcox
Coggeshall	Fitzgerald			

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Ordered, That the Clerk deliver said bill to the Assembly and request their concurrence therein.

Mr. Malby, from the committee on finance, to which was referred the concurrent resolution from the Assembly relative to extra compensation for the official stenographers of the Senate and Assembly, reported in favor of the adoption of the same without amendment.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative, as follows:

## FOR THE AFFIRMATIVE.

Allds	Coggeshall	Fechter	Keenan	Prime
Ambler	Cooper	Fitzgerald	Kehoe	Raines
Armstrong	Cordts	Frawley	Lewis	Riordan
Brackett	Cullen	Gardner	L'Hommedieu	Saxe
Brown	Davis	Gates	Malby	Stevens
Burr	Dooling	Goodsell	Marks	Tully
Carpenter	Drescher	Grady	Martin	Warnick
Cassidy	Elsberg	Hasenflug	McEwan	White
Cobb	Fancher	Hinman	Page	Wilcox

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Ordered, That the Clerk return said resolution to the Assembly, with a message that the Senate have concurred in the passage of the same.

Mr. Malby, from the committee on finance, to which was referred the concurrent resolution introduced by Mr. Armstrong, relative to a legislative investigation on the subject of insurance, reported in favor of the adoption of the same with the following amendment:

Page 2, strike out "\$25,000" and insert "\$50,000."

Mr. Cassidy moved to strike out "\$50,000" and restore the amount to "\$25,000."

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative, as follows:

## FOR THE AFFIRMATIVE.

Allds	Dooling	Gates	Malby	Riordan
Ambler	Drescher	Goodsell	Marks	Saxe
Armstrong	Elsberg	Grady	Martin	Stevens
Burr	Fancher	Hasenflug	McEwan	Tully
Coggeshall	Fechter	Hinman	Page	Warnick
Cooper	Fitzgerald	Kehoe	Prime	White
Cullen	Frawley	Lewis	Raines	Wilcox
Davis	Gardner	L'Hommedieu		

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Ordered, That the Clerk deliver said resolution to the Assembly and request their concurrence therein.

The Assembly returned the above resolution, with a message that they have concurred in the same without amendment.

The President appointed as the special committee on the part



of the Senate to investigate the affairs of insurance companies, Messrs. Armstrong, Tully and Riordan.

A message from the Governor was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,  
ALBANY, N. Y., *July 20, 1905.*

*To the Senate:*

I hereby nominate as a manager of the Rome State Custodial Asylum, Henry L. Elsner, M. D., of the city of Syracuse, to fill the vacancy caused by the failure of James F. Huntley to qualify as a manager.

FRANK W. HIGGINS.

Mr. White moved that said nomination be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

A message from the Governor was received and read, in the words following:

STATE OF NEW YORK—EXECUTIVE CHAMBER,  
ALBANY, N. Y., *July 20, 1905.*

*To the Senate:*

I hereby nominate as Commissioners of Gas and Electricity, and recommend the same for your consideration, John C. Davies of Camden, Oneida county, for a term ending June 1, 1909, and Lucian L. Shedden of the city of Plattsburg, for a term ending June 1, 1907, who were appointed as such commissioners during the recess of the Senate; Frederic E. Gunnison of the borough of Brooklyn, city of New York, for a term ending June 1, 1911. I also hereby designate Frederic E. Gunnison of the borough of Brooklyn, city of New York, as chairman of the said Commission of Gas and Electricity.

FRANK W. HIGGINS.

Mr. Cooper moved that the nomination of Mr. Gunnison be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Coggeshall moved that the nomination of Mr. Davies be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Prime moved that the nomination of Mr. Shedden be confirmed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The Assembly returned the following entitled bill, with a message that they have concurred in the passage of the same:

"An act making an appropriation for the expenses of the extraordinary session of the Legislature, called by proclamation of the Governor to convene on June 21, 1905." ((No. 1, Int. No. 1.)

Ordered, That the Clerk deliver said bill to the Governor.

Mr. Raines offered the following:

Resolved (if the Assembly concur), That when the Legislature adjourns to-day it be without date.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Ordered, That the Clerk deliver said resolution to the Assembly and request their concurrence therein.

The Assembly returned the above resolution, with a message that they have concurred in the same without amendment.

Messrs. Burnett and McKeown, a committee from the Assembly, appeared in the Senate Chamber and announced that the Assembly has completed its labors and is ready to adjourn.

Mr. Lewis offered the following:

Resolved, That a committee of two be appointed to wait upon the Governor and inform him that the Senate has completed its labors and is ready to adjourn.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

The President appointed as such committee Messrs. Lewis and Cullen.

The above named committee returned and reported that they had performed that duty.

Mr. Cobb offered the following:

Resolved, That a committee of two be appointed to wait upon the Assembly and inform that body that the Senate has completed its labors and is ready to adjourn.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

The President appointed as such committee Messrs. Cobb and Martin.

The above named committee returned and reported that they had performed that duty.

The President designated as officers of the Senate to remain after the extraordinary session for ten days to perform services, under the direction of the Clerk of the Senate, Lafayette B. Gleason, Clerk, and Ernest A. Fay, journal clerk.

Mr. Raines moved that the Senate adjourn without date.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

LAFAYETTE B. GLEASON,

*Clerk.*









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